INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF JULIEN GRISONAS FAMILY V. ARGENTINA

JUDGMENT OF SEPTEMBER 23, 2021

(*Preliminary Objections, Merits, Reparations and Costs*)

In the case of *Julien Grisonas Family v. Argentina,*

the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), composed of the following judges: *

Elizabeth Odio Benito, President
L. Patricio Pazmiño Freire, Vice President
Eduardo Vio Grossi, Judge
Humberto Antonio Sierra Porto, Judge, and
Eduardo Ferrer Mac-Gregor Poisot, Judge

also present,

Pablo Saavedra Alessandri, Registrar,**

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention") and Articles 31, 32, 42, 65, and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or "the Court's Rules of Procedure"), delivers this Judgment, which is structured as follows:

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* Judge Eugenio Raúl Zaffaroni, an Argentine national, did not take part in the processing, deliberation, or signature of this Judgment, in accordance with the provisions of Article 19(1) and (2) of the Court's Rules of Procedure. Judge Ricardo Pérez Manrique recused himself from participating in this case, pursuant to the provisions of Article 19(2) of the Statute of the Court and Article 21 of its Rules of Procedure, which was accepted by the President; he therefore did not participate in the deliberation and signature of this Judgment.

** The Deputy Registrar, Romina I. Sijniensky, did not participate in the processing of this case, or in the deliberation and signature of this Judgment.

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I
INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* On December 4, 2019, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") submitted to the jurisdiction of the Court the case of the Julien-Grisonas Family versus the Argentine Republic (hereinafter also "the State" or "Argentina"). According to the Commission, the case involves the State's alleged international responsibility for the forced disappearances of Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite, "beginning with a police and military operation carried out [on September 26, 1976,] during the dictatorship," and that "continues to this day." The case also involves the failure to adequately investigate, punish, and provide reparations in connection with these facts. Similarly, a failure to adequately investigate, punish, and provide reparations was alleged for the acts of torture, forced disappearance, and other human rights violations committed to the detriment of Anatole and Victoria,[1] son and daughter of the Julien Grisonas couple, which allegedly took place "as a result of the same operation."

2. *Proceedings before the Commission*. The proceedings before the Commission were as follows:

   a) Petition. On November 11, 2005, Eduardo Marques Iraola (hereinafter "the representative") filed the initial petition with the Commission.

   b) Report on Admissibility and Merits. On November 21, 2017, the Commission notified the parties of the application of Article 36(3) of its Rules of Procedure in deferring the treatment of admissibility until the debate and decision on the merits. On May 4, 2019, the Commission approved Report on Admissibility and Merits No. 56/19 (hereinafter also "the Report on the Merits" or "Report No. 56/19"), in which it declared the petition admissible, reached a number of conclusions, and made several recommendations to the State.

3. *Notification to the State.* The State was notified of the Report on the Merits in a communication dated June 4, 2019 and was given two months to report on compliance with the recommendations. At the request of the State, the Commission granted a first extension. Argentina requested a second extension, for which it indicated that it had "requested information from the different State agencies" regarding the object of the case and had not yet received a full response. According to the Commission, on that occasion, the State "did not provide any information reflecting concrete progress towards complying with the recommendations."

4. *Submission to the Court.* On December 4, 2019, the Commission submitted this case to the Court, as indicated, "in view of the need to secure justice for the victims."[2] This Court notes with concern that more than 14 years elapsed between the presentation of the initial petition before the Commission and the submission of this case to the Court.

5. *The Commission's requests.* The Commission therefore asked the Court to declare Argentina internationally responsible for the violation of the rights to recognition of juridical personality, life, humane treatment, personal liberty, judicial guarantees, and judicial

[1] Because they were adopted by Larrabeiti Yáñez family, Anatole Boris and Victoria Eva, biological son and daughter of Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite, identify themselves as Anatole Alejandro and Claudia Victoria, with the surnames Larrabeiti Yáñez (*infra* pars. 94 and 96 to 98). In this Judgment, the names Anatole and Victoria are used, along with the names and surnames with which both currently identify.

[2] The Commission appointed as its delegates before the Court the then-Commissioner Luis Ernesto Vargas Silva and then-Executive Secretary Paulo Abrão, and designated Assistant Executive Secretary Marisol Blanchard and attorneys Jorge Humberto Meza Flores and Analía Banfi Vique as legal advisors.

protection, enshrined in Articles 3, 4(1), 5, 7(1), 8(1), and 25(1) of the American Convention, read in conjunction with Articles 1(1) and 2 thereof; Articles I, paragraphs (a) and (b), and III of the Inter-American Convention on Forced Disappearance of Persons (hereinafter also "ICFDP"); as well as Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter also "ICPPT"), to the detriment of Mario Roger Julien Cáceres, Victoria Lucía Grisonas Andrijauskaite, Anatole Alejandro Larrabeiti Yáñez, and Claudia Victoria Larrabeiti Yáñez. The Commission asked the Court to order a series of measures of reparation.

II
PROCEEDINGS BEFORE THE COURT

6. *Notification to the State and the representative.* The State[3] and the representative were notified of the submission of the case on February 16, 2020.[4]

7. *Brief with pleadings, motions and evidence.* On May 25, 2020, the representative presented the brief with pleadings, motions, and evidence (hereinafter "pleadings and motions brief") pursuant to Articles 25 and 40 of the Court's Rules of Procedure. The petitioner broadly agreed with the Commission's arguments and indicated that it "shared the conclusions and recommendations" included in the Report on the Merits. Additionally, it argued that there had been multiple delays, omissions, and refusals to investigate "crimes known generically" at the time of the events as "spoils of war," in reference to "looting, occupa[tion] and usurpa[tion]" of the assets of the Julien Grisonas family. The representative also requested a series of measures of reparation.

8. *Brief with preliminary objections and answering brief.* On August 5, 2020, the State submitted to the Court its brief answering the Commission's application and Report on the Merits and the representative's pleadings and motions brief (hereinafter "answering brief"). In its brief, the State raised four preliminary objections. It asked that it be declared not internationally responsible for the alleged violations and, consequently, that no reparation measures be ordered.

9. *Observations on the preliminary objections.* In briefs of October 23, 2020, the representative and the Commission presented their observations on the preliminary objections.

10. *Public hearing*. In an order issued March 24, 2021, the President of the Court summoned the parties and the Commission to a public hearing on preliminary objections and possible merits, reparations and costs.[5] In a letter dated March 27, 2021, the representative requested reconsideration of certain points of this order.[6] The Court partially granted the request through

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[3] In a communication dated June 15, 2020, the State appointed Alberto Javier Salgado as principal agent, and Gonzalo Luis Bueno and Andrea Viviana Pochak as alternate agents. Also, via a communication dated August 5, 2020, Argentina appointed Gabriela Laura Kletzel and Rodrigo Robles Tristán as alternate agents.

[4] On March 17, 2020, the Court issued Resolution 1/20 (available at: https://www.corteidh.or.cr/docs/comunicados/cp_18_2020_eng.pdf), ordering suspension of calculation of all deadlines due to the World Health Organization's declaration of a pandemic from the spread of COVID-19 and in response to the "National Health Guidelines for the Monitoring Coronavirus Infections" issued by the Ministry of Public Health of the Republic of Costa Rica. Through Resolution 2/20 of April 16, 2020 (available at: https://www.corteidh.or.cr/docs/comunicados/cp_28_2020_eng.pdf), the suspension was extended through May 20, 2020.

[5] *Cf. Case of Julien Grisonas et al. v. Argentina. Call to hearing.* Order of the President of the Inter-American Court of Human Rights of March 24, 2021. Available in Spanish at: http://www.corteidh.or.cr/docs/asuntos/grisonas_y_otros_24_03_21.pdf.

[6] In its request for reconsideration, the representative asked that Anatole Alejandro Larrabeiti Yáñez and expert witness Francesca Lessa be required to testify at a public hearing.

an order issued April 19, 2021.[7] The public hearing was held using virtual technology on May 10 and 11, 2021, during the 141st regular session of the Court.[8]

11. *Amici Curiae*. The Court received two *amicus curiae* briefs filed by: (a) the Human Rights Clinic of the University of Texas at Austin School of Law;[9] and (b) the Gender, Law, and Society Research area of the Human Rights Group of Universidad Externado de Colombia.[10]

12. *Helpful information and evidence.* On May 12, 2021, the President of the Court asked the parties to submit certain documents and information.[11] The State responded to the request on May 14, 2021, and by submitting its final written arguments. The representative responded in its final written arguments. Likewise, on June 17, 2021, the Commission was asked to submit specific information on its processing of the case file.[12] On June 23, 2021, the Commission did so. Also, in a communication dated June 24, 2021, the President asked for certain information from the parties related to the request of May 12 of that year.[13] The parties responded to this request through briefs filed on June 30 and July 1, 2021. Lastly, on July 12, 2021, information was requested from the parties on specific procedures carried out in the legal cases at the domestic level.[14] The parties responded to the request in briefs filed on July 15 and 16, 2021.

13. *Final written arguments and observations*. On June 11, 2021, the Commission submitted its final written observations, and the representative and the State forwarded their final written arguments, together with a number of annexes.

14. *Observations on the annexes to the final arguments and the requests for helpful information and evidence.* On June 23, 2021, the representative presented its observations on the response provided by the State to the request of May 12 of the same year, including

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[7] The Court granted the reconsideration and agreed to receive the statement of Anatole Alejandro Larrabeiti Yáñez at the public hearing. *Cf. Case of Julien Grisonas et al. v. Argentina.* Order of the Inter-American Court of Human Rights of April 19, 2021. Available at: http://www.corteidh.or.cr/docs/asuntos/juliengrisonas_19_04_21.pdf.

[8] This hearing was attended by the following: (a) on behalf of the Inter-American Commission: Julissa Mantilla Falcón, First Vice President; Marisol Blanchard, Deputy Executive Secretary, Jorge Meza Flores and Analía Banfi Vique, advisors; (b) representing the alleged victims: Eduardo Marques Iraola and Anatole Alejandro Larrabeiti Yáñez, and (c) for the Argentine State: Alberto Javier Salgado, director of the International Human Rights Litigation Office of the Ministry of Foreign Affairs, International Trade, and Religion; Gonzalo Luis Bueno, legal advisor of the International Litigation Office on Human Rights of the Ministry of Foreign Affairs, International Trade and Religion; Andrea Viviana Pochak, undersecretary for Protection and International Human Rights Liaison of the National Human Rights Office of the Ministry of Justice and Human Rights; Gabriela Laura Kletzel, national director of international legal affairs regarding human rights of the National Human Rights Office of the Ministry of Justice and Human Rights; and Rodrigo Albano Robles Tristán, legal advisor of the National Office of International Legal Affairs regarding Human Rights of the Human Rights Office of the Nation of the Ministry of Justice and Human Rights.

[9] The brief was signed by Ariel Dulitzky. The document refers to international standards on forced disappearance and the doctrine of shared responsibility between States.

[10] The brief was signed by María Daniela Díaz Villamil, Jessika Mariana Barragán, Laura Valentina Rocha Marcelo, Valentina Benítez Torres, Mariana Orozco Pinzón, and Juliana Valentina Prieto. It refers to measures of reparation with a gender approach in cases related to serious human rights violations.

[11] On May 12, 2021, the parties were asked to provide the following: (a) a copy of the case file of the lawsuit for damages filed in 1996 by the alleged victims against the National State, case No. 14,846/96; (b) information on the status of the processing of the administrative procedures filed in under Laws No. 24,411 and 25,914, and (c) to the State, to forward a copy of the judgment of the Supreme Court of Justice of the Nation mentioned by expert witness María José Guembe in her opinion delivered at a public hearing.

[12] On June 17, 2021, the Commission was asked to report whether it had included the opinion of August 17, 2017 issued by the National Human Rights Office in its case file on the matter.

[13] On June 24, 2021, the parties were asked to report on the suspension of the administrative case files being processed under Laws No. 24,411 and 25,914, and the State was asked to report on amendments to articles 2560 and 2561 of the Civil and Commercial Code of the Nation.

[14] On July 12, 2021, the parties were asked to report on the responses given the alleged victims' requests regarding the intervention and consultation of the Argentine Forensic Anthropology Team in connection with the search for the remains of Victoria Lucía Grisonas Andrijauskaite and Mario Roger Julien Cáceres, as well as other measures requested in this regard.

the annexes sent by Argentina together with its final written arguments. On the same date, the Commission indicated that it had no observations in this regard. The representative, on June 30, and the State, on July 1, 2021, presented their observations on the information provided by the Commission pursuant to the request of June 17, 2021. On July 8, 2021, the State and the representative presented their respective observations on what was reported by both parties in response to the request of June 24 of the same year. Lastly, on July 20, 2021, the State indicated that it had no observations regarding the information provided by the representative in response to the request of July 12, 2021. On July 27, 2021, the representative and the Commission forwarded their observations in this regard (*supra* para. 12).

15. The Court deliberated on this Judgment in a virtual session on September 21 and 23, 2021.[15]

III
JURISDICTION

16. The Court has jurisdiction to hear this case, pursuant to Article 62(3) of the Convention, because Argentina has been a State Party to the American Convention since September 5, 1984 and accepted the contentious jurisdiction of the Court on the same date. In addition, the Argentine State deposited the respective instruments of ratification for the Inter-American Convention to Prevent and Punish Torture on March 31, 1989,[16] and the Inter-American Convention on Forced Disappearance of Persons on February 28, 1996.[17]

IV
PRELIMINARY OBJECTIONS

17. In this case, the State raised four preliminary objections, as follows: (a) preliminary objection of lack of jurisdiction *ratione temporis*; (b) preliminary objection of lack of jurisdiction *ratione materiae*; (c) preliminary objection of failure to exhaust domestic remedies for harm caused by the alleged violation of Articles 8 and 25 of the Convention, in connection with the breach of the duties to provide reparations for human rights violations and adapt domestic law; and (d) preliminary objection for violation of the right to defense and international due process, to the detriment of the Argentine State.

A. Preliminary objection of lack of jurisdiction ratione temporis

A.1. Arguments of the parties and of the Commission

18. In its pleadings and motions brief, the ***State*** argued that the representative intends to attribute international responsibility to it for facts that took place prior to the entry into force for Argentina of the American Convention, the ICPPT, and the ICFDP. It added in the brief submitting the case that the Commission also used ambiguous wording that does not distinguish between the rights violations attributable to the State to the detriment of the Julien Grisonas couple and the violations to the detriment of Anatole and Victoria. It requested that the objection filed be granted and, consequently, that "all claims by the Commission and the representative based on facts that took place prior to September 5, 1984, be dismissed."

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[15] Due to the exceptional circumstances brought about by the COVID-19 pandemic, this Judgment was deliberated and approved during the 144th regular session, which was held remotely, using technological means, as provided for by the Rules of Procedure of the Court.

[16] Pursuant to Article 22 of the ICPPT, "the Convention shall enter into force on the thirtieth day following the date on which [the] State deposits its instrument of ratification or accession."

[17] Pursuant to Article XX of the ICFDP, "the Convention shall enter into force on the thirtieth day from the date on which [the] State deposited its instrument of ratification or accession."

19. The ***representative*** argued that "the factual framework of the case includes […] the facts that took place on September 26, 1976, when the process constituting the crime of forced disappearance began for the four members of the Julien-Grisonas family." It pointed out that the forced disappearances of Anatole and Victoria continue, since the document signed on August 2, 1979 by the adoptive parents and the biological grandmother "was intended to establish basic legal status and reflect what was agreed to going forward." However, not only did the children not participate in or know about the agreement, but, in fact, their lives remained unchanged. As for the ICPPT, it argued that torture is not perpetrated or completed instantly, such that, like forced disappearance, it is "a crime of an ongoing nature."

20. The ***Commission*** indicated that in the brief submitting the case, it had specified that the facts under judgment were "the actions and omissions of the State that occurred or continued to occur after September 5, 1984," adding that "falling within the competence of the Court are the facts related to the forced disappearance of Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite, which continue to this day, the lack of investigation and punishment for the facts of which the brothers Anatole and Victoria were victims, and the lack of adequate reparation." It asked that the preliminary objection raised be dismissed.

A.2. Considerations of the Court

21. The Argentine State recognized the contentious jurisdiction of this Court on September 5, 1984, and in its interpretative declaration indicated that the Court would have jurisdiction with respect to "facts taking place after the ratification" of the American Convention, carried out on that same date.[18] As for the ICPPT, the ratification took place on November 18, 1988 and the ratification instrument was deposited on March 31, 1989. For its part, the ICFDP was ratified by the State on October 31, 1995, and the respective instrument was deposited on February 28, 1996.

22. Based on the foregoing and on the principle of non-retroactivity set forth in Article 28 of the Vienna Convention on the Law of Treaties of 1969,[19] the Court cannot exercise its contentious jurisdiction with respect to acts or facts taking place prior to recognition of its competence or, as the case may be, to the date of entry into force for the State of the treaties whose violation is alleged.[20]

23. However, the Court has held that even when the alleged violations stem from prior facts, it may have competence to the extent that there are independent facts that have occurred within its temporal jurisdiction that amount to autonomous and specific violations, as well as regarding facts that are ongoing or permanent, for as long as the violation of the international obligation continues.[21]

24. The Court notes that the representative's reference to the events that took place on September 26, 1976, is related to the alleged forced disappearance of the four members of the Julien Grisonas family. However, in its brief submitting the case, although the Commission drew a general conclusion as to the rights it considered violated, it did distinguish among the

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[18] Available at: http://cidh.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm

[19] Article 28: "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

[20] *Cf. Case of the Serrano Cruz Brothers v. El Salvador. Preliminary Objections.* Judgment of November 23, 2004. Series C No. 118, para. 66; and *Case of Perrone and Preckel v. Argentina. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of October 8, 2019. Series C No. 384, para. 19, and *Case of Montesinos Mejia v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of January 27, 2020. Series C No. 398, para. 18.

[21] *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations, and Costs.* Judgment of September 1, 2010. Series C No. 217, para. 21, and *Case of Perrone and Preckel v. Argentina*, *supra*, para. 20.

facts, insofar as it indicated that it submitted to the jurisdiction of the Court the actions or omissions of the State concerning the forced disappearance of Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite; the failure to investigate and punish with regard to the facts that affected their children, Anatole and Victoria; and the lack of adequate reparation.

25. In this regard, the Court recalls that the ongoing or permanent nature of the forced disappearance of persons has been repeatedly recognized by international human rights law, in the sense that the act of disappearance and its execution begin with the deprivation of liberty of the person and the subsequent lack of information about their fate, and it continues until the whereabouts of the disappeared person are known or their remains are identified with certainty.[22] Accordingly, the Court is competent to analyze the arguments of the representative and the Commission regarding the forced disappearance of Julien Cáceres and Grisonas Andrijauskaite.

26. As for the representative's argument regarding the ongoing nature of the forced disappearance of Anatole and Victoria, the Court notes that because their whereabouts have been established by their biological grandmother and in view of the agreement that she reached with their adoptive parents, expressed in the document of August 2, 1979, the Court notes that both persons have recovered their identities and reestablished ties with their blood family. According to this account, Anatole and Victoria were informed of their identities and origin in a timely fashion; they met the rest of their biological relatives; and, being minors, they were asked which surnames they wanted to adopt, and opted to keep those of their adoptive parents (*infra* paras. 97 and 98).[23] Therefore, in accordance with the criteria used by this Court in previous cases, the forced disappearance of which Anatole and Victoria were victims ceased when the truth about their identity was revealed to them and, in turn, they were provided with the de facto and de jure opportunity to recover their true identities and the family bond with their blood relatives, which did in fact take place with the agreement signed on August 2, 1979.[24] Consequently, given the date on which both forced disappearances ceased, the Court lacks competence *ratione temporis* to rule on the matter.

27. Additionally, the Court notes that because they amount to separate violations, the alleged violations of Articles 1, 6, and 8 of the ICPPT due to "lack of investigation and punishment" of the facts affecting Anatole and Victoria do fall within the Court's temporal competence, dating from Argentina's ratification of the aforementioned international instrument.[25] Outside of these elements, the Court lacks jurisdiction regarding allegations of the violation of the ICPPT, particularly with regard to the commission of acts of torture, since they took place before the State ratified this international instrument or the American

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[22] *Cf. Inter alia*, *Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 155, and *Case of Garzón Guzmán et al. v. Ecuador. Merits, Reparations, and Costs.* Judgment of September 1, 2021. Series C No. 434, para. 62.

[23] The United Nations Working Group on Enforced or Involuntary Disappearances noted in 1981 that "two Uruguayan children, aged one and four years old, who had been abducted in Buenos Aires [...] appeared three months later abandoned [...] in Valparaíso, Chile," and added that "[t]he real identity of the children was revealed in 1979, following a search by their grandparents." *Cf*. Commission on Human Rights, Report of the Working Group on Enforced or Involuntary Disappearances, January 22, 1981, UN Doc. E/CN.4/1435, par. 172. Also see, Commission on Human Rights, Report of the Working Group on Enforced or Involuntary Disappearances, December 31, 1981, UN Doc. E/CN.4/1492, par. 41, and Report of the Working Group on Enforced or Involuntary Disappearances, December 9, 1983, UN Doc. E/CN.4/1984/21, par. 28.

[24] *Cf. Case of Gelman v. Uruguay. Merits and Reparations.* Judgment of February 24, 2011. Series C No. 221, para. 51, and *Case of Contreras et al. v. El Salvador. Merits, Reparations, and Costs.* Judgment of August 31, 2011. Series C No. 232, para. 89. The Working Group on Enforced or Involuntary Disappearances agrees with this view. *Cf*. Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, General comment on children and enforced disappearances, February 14, 2013, UN Doc. A/HRC/WGEID/98/1, pars. 9 and 10.

[25] *Cf. Case of Herrera Espinoza et al. v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 1, 2016. Series C No. 316, par. 18; *Case of Terrones Silva et al. v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 26, 2018. Series C No. 360, par. 34, and *Case of Montesinos Mejia v.* Ecuador, supra, par. 19.

Convention on Human Rights.

28. Consistent with the above, this Court reaffirms its settled case law regarding its temporal jurisdiction, and in view of the specific arguments raised by the representative, the preliminary objection is partially granted, with the scope specified in the two preceding paragraphs.

A. Preliminary objection of lack of jurisdiction ratione materiae

B.1. Arguments of the parties and of the Commission

29. The ***State*** argued that the Report on the Merits included a conclusion on the violation of different provisions of the American Declaration of the Rights and Duties of Man (hereinafter also "the American Declaration"). It indicated that this preliminary objection complements the *ratione temporis* objection. It held that although the Court may interpret the provisions of the American Convention in light of the American Declaration, no provision on the Convention or elsewhere grants it "authority to establish the violation of provisions included" in the Declaration. It asked that the objection be sustained and, consequently, that the Court "declare itself without competence to determine violations of the norms of the American Declaration."

30. The ***representative*** noted that in the pleadings and motions brief, it requested application of the American Declaration in relation to facts that "began 'prior' to the entry into force of the Convention[,] but that, due to their continuing or permanent nature, they persisted 'subsequent' to it."

31. The ***Commission*** argued that in the brief submitting the case it did not "explicitly or tacitly ask" the Court to determine whether the norms of the American Declaration had been violated. It added that the allusion to events prior to the entry into force of the American Convention and other treaties for Argentina, "is exclusively for the purposes of understanding the background of the facts giving rise to the State's international responsibility." It asked that the preliminary objection raised be dismissed.

B.2. Considerations of the Court

32. The Court notes that when submitting the case, the Commission did not ask for a finding of violations of the American Declaration, which is consistent with the scope of the contentious jurisdiction conferred to this Court by the American Convention in Article 62(3). The Court, therefore, will not rule on violations of the American Declaration. It should be noted that the arguments of the representative refer to facts that, as indicated, fall outside the temporal competence of this Court (*supra* paras. 26 and 27).

33. Therefore, the preliminary objection raised is denied.

C. Preliminary objection of failure to exhaust domestic remedies as regards harm involved in the alleged violation of Articles 8 and 25 of the Convention, in connection with the breach of the duties to provide reparations for human rights violations and adapt domestic law

C.1. Arguments of the parties and of the Commission

34. The ***State*** argued that during the proceedings before the Commission, it maintained that "the motion for reparations […] can be satisfied with the compensation and pension provided under the systems of reparation established in special […] laws [No.] 24,411, 25,914, and 26,913." It argued that "after it had filed the petition […] the representative […] applied for compensation under these special laws," making the case "inadmissible" in view of the

principle of complementarity of the inter-American system. It asked that the preliminary objection be granted and, consequently, that the Court "decline to consider such injuries."

35. The ***representative*** noted that the State's initial communication in the proceeding before the Commission was intended to "open a space for dialogue," and did not entail a formal objection when it pointed to the 2018 reparations laws. It added that the procedures provided for in those laws are "essentially optional for the victims [and] are not suitable […] to addressing and compensating for the multiple and serious damage caused."

36. The ***Commission*** indicated that in its Report on Admissibility and Merits No. 56/19, it analyzed the issue and concluded that, since these were "allegations of serious human rights violations, the domestic remedies that should be taken into account for purposes of admissibility [were] those related to the criminal investigation and possible punishment of the persons responsible." It indicated that, because the alleged victims had opted for the judicial route instead of an administrative procedure, it had not discussed the need to exhaust this administrative remedy. It asked that the preliminary objection be dismissed.

C.2. Considerations of the Court

37. Article 46(1)(a) of the American Convention stipulates that, in order to determine that a petition or communication lodged before the Commission under Articles 44 or 45 of the Convention is admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.[26]

38. The Court reiterates that an objection to the exercise of its jurisdiction based on the alleged failure to exhaust domestic remedies must be filed during the admissibility stage of the procedure before the Commission.[27] During this admissibility process, the State must describe clearly to the Commission the remedies that, in its view, have not yet been exhausted. Additionally, the State's arguments undergirding the preliminary objection before the Commission during the admissibility stage must be the same as the ones made before the Court.[28]

39. In this regard, the Court notes that, through the communication of November 14, 2017, the Commission reported that it had decided to analyze "the admissibility and the merits of the case jointly at the appropriate time."[29] In response, in a communication dated September 20, 2018, and prior to the issuance of Report on Admissibility and Merits No. 56/19, the State asked that the petition be declared inadmissible because, among other issues, "the laws on reparation [were] the appropriate mechanisms for a satisfactory response to pecuniary claims," and a report from the Office for Human Rights and Cultural Pluralism, describing the mechanisms of Laws No. 24,411 and 25,914.[30] On this basis, the Court notes that Argentina made its arguments regarding the mechanisms offered by the two laws cited in a timely manner, without citing Law No. 26,913, as the appropriate means of satisfying certain claims made by the petitioners, based on which it asked that the petition not be admitted.

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[26] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections.* Judgment June 26, 1987. Series C No. 1, par. 85; and *Case of Martínez Esquivia v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment of October 6, 2020. Series C No. 412, par. 20.

[27] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections, supra*, par. 88, and *Case of Moya Solís v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of June 3, 2021. Series C No. 425, par. 21.

[28] *Cf. Case of Furlán and Relatives v. Argentina. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 31, 2012. Series C No. 246, par. 29, and *Case of Moya Solís v.* Peru, *supra*, par. 21.

[29] *Cf.* Communication of November 14, 2017 sent by the Commission (evidence file, volume II, procedure before the Commission, folios 2388 and 2389).

[30] *Cf.* Communication of September 20, 2018, presented by the State (evidence file, volume II, procedure before the Commission, folios 2287 to 2306). The communication included the report of July 11, 2018, submitted by the Office of Human Rights and Cultural Pluralism.

40. In this regard, the Court recalls that remedies intended exclusively for providing reparations do not necessarily have to be exhausted by the alleged victims and therefore do not inhibit the Court's competence to hear a case.[31] Essentially, the Court finds that, in cases like this one, in which serious human rights violations are alleged, the admissibility requirements for the petition should involve domestic remedies addressing the criminal investigation and possible punishment of those responsible,[32] regarding which specific pleadings were made as to their lack of effectiveness and excessive delay, which will be the subject of analysis in the merits.

41. Based on the above considerations, the Court rejects the preliminary objection.

D. Preliminary objection for violation of the right to defense and international due process to the detriment of the Argentine State

D.1. Arguments of the parties and of the Commission

42. The ***State*** pointed out that it had made "very specific arguments justifying that available domestic remedies for reparations had not been exhausted," but that the Commission "completely ignored any consideration of such arguments." It added that Articles 46(1) of the American Convention and 31 of the Commission's Rules of Procedure establish "a compelling legal imperative" for verifying that domestic remedies have been properly exhausted, and therefore, the Commission's lack of response "amounts to a violation of international due process to the detriment of the State." It asked that the preliminary objection be admitted and, consequently, that the Court "refrain from considering any injury related to the alleged 'lack of comprehensive redress.'"

43. The ***representative*** argued that at no time prior to the Report on Admissibility and Merits No. 56/19 did the State "raise a specific, timely, clear, and duly grounded challenge" to the admissibility of the petition.

44. The ***Commission*** indicated that in view of its autonomy and independence, the Court's authority to review the legality of its actions is admissible only "in exceptional cases in which there is a serious error that violates the parties' right to defense." It indicated that in its Report on Admissibility and Merits No. 56/19, it analyzed what was pertinent based on the arguments of the parties. It added that the State did not demonstrate the existence of a serious error violating its right to defense, since its arguments refer to a disagreement with the criteria set forth in analysis of the admissibility of the petition. It asked that the preliminary objection be dismissed.

D.2. Considerations of the Court

45. The State's arguments constitute a request to review the legality of the Commission's actions. In this regard, the Court recalls that, in matters that are before it, it has the power to review the legality of the Commission's actions, but this does not necessarily mean conducting ex officio review of proceedings carried out before that body. Such review may proceed, then, in cases where one of the parties alleges a serious error that violates its right of defense, in which case such harm must be effectively demonstrated. A complaint or discrepancy of criteria in relation to the actions of the Inter-American Commission is not

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[31] *Cf. Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits, and Reparations.* Judgment of November 30, 2012. Series C No. 259, par. 38, and *Case of Vasquez Durand et al. v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of February 15, 2017. Series C No. 332, par. 38.

[32] *Cf. Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs.* Judgment dated November 30, 2016. Series C No. 328, par. 46.

sufficient.[33]

46. In response to the representative's argument, the Court reiterates that, in principle, the State made its arguments regarding the inadmissibility of the case in a timely manner before the Commission. For its part, in analyzing the admissibility of the petition, specifically the requirement of prior exhaustion of domestic remedies, the Commission indicated in Report No. 56/19 that "in cases involving allegations of grave human rights violations, the domestic remedies that should be taken into account are those related to the criminal investigation," and this was the basis on which it examined the process and the outcome of the criminal actions concerning the facts of the case.

47. The Court therefore finds that the Commission did analyze matters relating to the exhaustion of domestic remedies to decide on the admissibility of the petition. It is a separate issue that the State does not agree with the Commission's reasoning, but since this constitutes a mere disagreement over criteria, it does not constitute a serious violation of the State's right to defense and is not admissible as a motion to review the Commission's actions. Therefore, the Court dismisses this preliminary objection.

V
EVIDENCE

A. Admissibility of the documentary evidence

48. The Court received a variety of documents presented as evidence by the Commission and by the parties together with their main briefs (*supra* paras. 4, 7, and 8). As in other cases, documents are admitted if they were presented at the proper procedural stage (Article 57 of the Rules of Procedure)[34] by the parties and the Commission, if their admissibility was neither contested nor opposed, and if their authenticity was not questioned.[35]

49. Additionally, the Commission and the parties identified several documents using hyperlinks. As this Court has established, if a party provides at least a direct hyperlink to the document it cites as evidence and it is possible to access the document, neither legal certainty nor procedural balance is impaired, because it can be found immediately by the Court and by the other parties.[36] In this regard, it admits the documents for which a functional hyperlink is provided.[37]

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[33] *Cf. Case of the Saramaka Indigneous People v. Suriname. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 28, 2007. Series C No. 172, par. 32, and *Case of Moya Solís v.* Peru, *supra*, par. 22.

[34] Documentary evidence, in general and pursuant to Article 57(2) of the Rules of Procedure, may be presented with the application brief, the pleadings and motions brief, or the answering brief, as applicable, and evidence submitted outside these procedural opportunities cannot be admitted, except in the event of the exceptions stated in Article 57(2) of the Rules of Procedure (namely, *force majeure*, serious impediment) or if it refers to an event which occurred after the procedural moments indicated.

[35] *Cf. Case of Velásquez Rodríguez v. Honduras.* Merits, *supra*, par. 140, and *Case of Garzón Guzmán et al. v.* Ecuador, supra, par. 33.

[36] *Cf. Case of Escué Zapata v. Colombia. Merits, Reparations, and Costs.* Judgment of July 4, 2007. Series C No. 165, par. 26; and *Case of San Miguel Sosa et al. Venezuela. Merits, Reparations, and Costs.* Judgment of February 8, 2018. Series C No. 348, par. 33.

[37] This is for the following evidence: a) identified in the Report on the Merits: i) Nunca Más. Informe de la Comisión Nacional sobre la Desaparición de Personas, Buenos Aires, Eudeba, 1984, available at: http://www.desaparecidos.org/arg/conadep/nuncamas/; ii) "El Nunca Más y los crímenes de la dictadura." Ministry of Culture, Presidency of the Argentine Nation, Edición Cultura Argentina, available at: https://librosycasas.cultura.gob.ar/wp-content/uploads/2015/11/LC_ NuncaMas_Digital1.pdf; iii) La Judicialización de la Operación Cóndor Report of the Office of the Prosecutor for Crimes against Humanity of the Office of the Public Prosecutor of Argentina, Buenos Aires, November 2015, available at: https://www.fiscales.gob.ar/wp-content/uploads/2015/11/Informe- ProcuLesa-Op-C%C3%B3ndor-Final.pdf; iv) Office of Human Rights for the recent past, Eastern Republic of Uruguay, Disappeared detainees due to State responsibility and/or acquiescence, file corresponding to Julien Cáceres, Mario Roger, file L.D.D. No. 064, available at: https://www.gub.uy/secretaria-Derechos-humanos-pasado-reciente/sites/secretaria- Derechos-humanos-pasado-reciente/files/documentos/publicaciones/JULI%C3%89N%20C

%C3%81CERES%2C%20Mario%20Roger%20file%20accessible.pdf; v) Judgment issued by the Supreme Court of Justice of the Nation on June 14, 2005, case of "Simón, Julio Héctor et al. regarding illegitimate deprivation of liberty, etc. – case no. 17,768" available at: https://www.mpf.gov.ar/Institucional/UnidadesFE/Simon-CSJN.pdf; vi) General description of trials in Argentina. Judicial Information Center, available at: https://www.cij.gov.ar/lesa-humanidad.html, and vii) order issued by the National Federal Criminal and Correctional Court No. 3 on September 6, 2006, case No. 2637/04, available at: https://www.cij.gov.ar/nota-1190-.html; (b) identified in the pleadings and motions brief: i) documentary "Los huérfanos del Cóndor." Cauri films and France 2, 2003, available at: https://www.youtube.com/watch?v=v9SL6sVYmaA; ii) Judgment issued by the Supreme Court of Justice of the Nation on March 28, 2017, case No. CSJ 203/2012 (48-V)/CS1, "Villamil, Amelia Ana v. Estado Nacional regarding damages and losses", available at: https://www.cij.gov.ar/nota-25380-La-Corte -Supreme--by-major-to--ratified--its-precedent-on-the-prescription-of-civil-actions-against-the-State-in-trials-against-humanity.html; iiii) Judgment issued by the Supreme Court of Justice of the Nation on May 9, 2019, case No. CSJ 9616/2018/1/RH1, "Ingegnieros, María Gimena v. Techint Sociedad Anónima Compañía Técnica Internacional regarding accident special law," available at: https://www.cij.gov.ar/nota-34417-Las -labour-actions-for-damage-arising-from-crimes-against-humanity-are-prescriptible.html; iv) press release published at sudestada.com.uy on May 20, 2020, entitled: "Los legajos inculpan a los responsables del terrorismo de Estado," available at: https://www.sudestada.com.uy/articleId 32722c02 -96e3-408a-a594-73fc4c1ff643/10893/News-Detail ; v) press release published on sudestada.com.uy on May 20, 2020, entitled: "Plan Cóndor: las justas razones para la prisión perpetua de 13 uruguayos," available at: https://www.sudestada.com. uy/articleId 275b301a-c1d7-47c8-8874-ac384543aca4/10893/Detalle-de-Noticia, and vi) Judgment issued by the Supreme Court of Justice of the Nation on December 26, 2019, case No. CSJ 2148/2015/RH1, "Farina, Haydée Susana regarding manslaughter," available at: https://www.cij.gov.ar/nota-36553-Prescripci-n--la-Corte-Suprema-rechaz- -a-doctrine-of-the-criminal-jurisdiction-of-the-province-of-Buenos-Aires-contrary-to-the-principle-of-legality.html; and (c) identified in the answering brief: i) Law No. 27,143, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/245000-249999/248442/norma.htm; ii) Luz Ibarburu Observatory, case of "Gavazzo Pereyra, José Nino; Arab Fernández, José Ricardo - a crime of deprivation of liberty," available at: https://www.observatorioluzibarburu.org/causas/139; iii) Luz Ibarburu Observatory, case of "Chargonia, Pablo," available at: https://www.observatorioluzibarburu.org/causas/141; iv) communication published by the Presidency of the Argentine Republic on March 24, 2004, entitled: "Palabras del Presidente de la Nación, Doctor Néstor Kirchner, en el acto de firma del convenio de la creación del Museo de la Memoria y para la Promoción y Defensa de los Derechos Humanos," available at: https://www.casarosada.gob.ar/informacion/archivo/24549-blank-79665064; v) press release published in the newspaper *Página 12* on July 28, 2020, entitled "Plan Cóndor: 'Argentina en el país que más avanzó en el juzgamiento de los delitos,'" available at: https://www.pagina12.com.ar/281127-plan-condor-argentina-is-the-country-that-greatest-advanced-in-the-juzgam; vi) Judgment issued by the National Federal Criminal and Correctional Appeals Chamber of the Federal Capital on December 9, 1985, case No. 13/84, and Judgment issued by the Supreme Court of Justice of the Nation on December 30, 1986, available at: https://www.mpf.gob.ar/lesa/jurisprudencia/sentencia-del-juicio-a- los-comandantes-cause-1384/; vii) IACHR, Report No. 00/21, Case 12,059, Carmen Aguiar de Lapacó. Argentina. February 29, 2000, available at: https://www.cidh.oas.org/annualrep/99span/Soluci%C3%B3n%20Amistosa/Argentina12059.htm; viii) Order No. 42/08 of the Supreme Court of Justice of the Nation of December 29, 2008, available at: https://www.csjn.gov.ar/documentos/descargar/?ID=29471; ix) Resolution PGN 1442/13 of the Attorney General of the Nation of July 29, 2013, available at: https://www.mpf.gov.ar/resoluciones/pgn/2013/PGN-1442-2013-001.pdf; x) Law no. 26,691, Preservation, Signage, and Publicization of Memorial Sites of State Terrorism, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/180000-184999/184962/norma.htm; xi) Resolution No. 2318/12 of the Ministry of Justice and Human Rights of October 29, 2012, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/200000-204999/204246/texact.htm; xii) Law No. 23,511, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/20000-24999/21782/norma.htm; xiii) Law No. 25,457, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/65000-69999/68738/norma.htm; xiv) Resolution PGN 435/12 of the Attorney General of the Nation of October 23, 2012, available at: https://www.mpf.gov.ar/resoluciones/pgn/2012/PGN-0435-2012-002.pdf; xv) Law No. 27,148, Organic Law of the Public Prosecutor's Office of the Nation, available at: https://www.mpf.gob.ar/wp-content/uploads/2018/08/Ley_organica_2018.pdf; xvi) Resolution PGN 398/12 of the Attorney General of the Nation of October 19, 2012, available at: https://www.mpf.gov.ar/resoluciones/pgn/2012/PGN-0398-2012-002.pdf; xvii) Law No. 27,372, Law on the rights and guarantees of victims of crime, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/275000-279999/276819/norma.htm; xviii) Law No. 26,548, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/160000-164999/160772/norma.htm; xix) Law No. 26,549, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/160000-164999/160779/norma.htm; xx) Law No. 26,550, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/160000-164999/160777/norma.htm; xxi) Order No. 274/2016 of the Ministry of Security of June 24, 2016, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/260000-264999/263058/norma.htm; xxii) Resolution No. 166/2011 of the Ministry of Security of April 14, 2011, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/180000-184999/181228/norma.htm; xxiii) Law No. 23,053, available at: http://www.saij.gob.ar/23053-nacional-reingreso-al-cuadro-permanente-activo-servicioexterior-nacion-funcionarios-declarados-prescindibles-lns0003149-1984-02-22/123456789-0abc-defg-g94-13000scanyel; xiv) Law No. 23,117, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/27024/norma.htm; xxv) Decree No. 2407, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/310000-314999/310411/norma.htm; xxvi) Law No. 23,466,

50. In briefs submitted by the representative dated September 8 and November 30, 2020, and March 11 and July 12, 2021, as well as from the State dated November 16 and December 3, 2020, both parties put forward documents not submitted previously, arguing they amounted to new or supervening facts. The Court recalls that, in accordance with Article 57(1) of the Rules of Procedure, the proper time to present the documentary evidence is, in general, with the briefs submitting the case, with pleadings and motions, or answering the submission of the case, as applicable. In this regard, the Court recalls that evidence submitted outside the proper procedural stage is inadmissible, unless it is covered by the exceptions established in Article 57(2) of the Rules of Procedure: namely, force majeure, serious impediment, or if it refers to an event that occurred after the said procedural occasions.[38] In this sense, a number of documents submitted by the parties in these briefs describe facts related to the case that took place after the pleadings and motions brief and the answering brief were filed. These documents are therefore evidence of supervening facts, pursuant to the terms of Article 57(2) of the Rules of Procedure, and there being no objection to them, they are admitted.[39] Undated documents for which it is not possible to determine whether they refer to events subsequent to the submission of the main briefs[40] and documents that cannot be accessed through the hyperlink provided[41] are not admitted (*supra* para. 49). For its part, the State indicated that the document cited by the representative in its brief of July 12, 2021, is not "related [...] to the facts" of the case. The Commission indicated that

available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/60000-64999/63251/texact.htm; xxvii) Law No. 24,043, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/442/texact.htm; xxvii) Law No. 26,564, available at: http://www.jus.gob.ar/media/157486/Ley%2026564.pdf; xxix) Judgment issued by the Supreme Court of Justice of the Nation on July 13, 2007, M. 2333. XLII. et al., "Mazzeo, Julio Lilo et al. regarding rec. of cassation and unconstitutionality," available at: http://sjconsulta.csjn.gov.ar/sjconsulta/documentos/verDocumentoByIdLinksJSP.html?idDocumento=6305031&cache=1596248222950; xxx) statement published by the Public Prosecutor's Office on March 23, 2020, entitled "24 de marzo: la Procuraduría de Crímenes contra la Humanidad actualizó los datos sobre el proceso de juzgamiento," available at: https://www.fiscales. gob.ar/lesa-humanidad/24-de-marzo-la-procuraduria-de-crimes-contra-la-humanidad-updated-the-data-on-the-trial-process/; xxxi) Law No. 25,778, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/88138/norma.htm; xxxii) article published in the newspaper *Página 12* on May 11, 107, entitled "Un rechazo que se convirtió en inmensa multitud", available at: https://www.pagina12.com.ar/36972-un-rechazo-que-se-convirtio-en-inmensa-multitud; xxxiii) Law No. 27,362, available at: http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=274607; xxxiv) Judgment issued by the Supreme Court of Justice of the Nation on December 4, 2018, available at: http://sjconsulta.csjn.gov.ar/sjconsulta/documentos/verDocumentoByIdLinksJSP.html?idDocumento=7493413&cache=1596267246165; xxxv) Law No. 26,679, available at: http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do;jsessionid=9CBDBB43E8EE9450C27A19514B1B2588?id=181888; and xxxvi) monthly valuation of the basic food basket and the total basic basket. Greater Buenos Aires, June 2020, Ministry of Economy, available at: https://www.indec.gob.ar/uploads/informesdeprensa/canasta_07_205381DE6C24.pdf.

[38] *Cf. Case of the Barrios Family v. Venezuela. Merits, Reparations, and Costs.* Judgment of November 24, 2011. Series C No. 237, par. 17, and *Case of Bedoya Lima et al. v. Colombia. Merits, Reparations, and Costs.* Judgment of August 26, 2021. Series C No. 431, par. 32.

[39] Includes the following evidence: a) included by the representative in its brief of September 8, 2020: article published in *The Guardian* on September 3, 2020, entitled "Operation Condor: the cold war conspiracy that terrorized South America," available at: https://www.theguardian.com/news/2020/sep/03/operation-condor-the-illegal-state-network-that-terrorized-south-america; (b) provided by the State on November 16, 2020: i) communications issued by the Public Prosecutor's Office on August 28 and October 16, 2020, and ii) audiovisual record of the hearing livestreamed on October 16, 2020, Judicial Information Center; (c) provided by the representative on November 30, 2020: verdict issued by Oral Criminal Court No. 1 on November 27, 2020, case No. 3002; d) provided by the State on December 3, 2020: i) verdict issued by Oral Criminal Court No. 1 on November 27, 2020, case No. 3002, and ii) audiovisual record of the hearing broadcast live on November 27, 2020, Judicial Information Center; and e) provided by the representative on March 11, 2021: i) Judgment issued by Oral Criminal Court No. 1 on March 3, 2021, case No. 3002; ii) brief of March 9, 2021, filed by the Attorney General of the Support Unit for Cases of Human Rights Violations during State Terrorism before the Federal Oral Criminal Court No. 1, case No. 2261; iii) brief filed on February 18, 2021 by Eduardo Marques Iraola before the Supreme Court of Justice of the Nation, and iv) Order issued by the Supreme Court of Justice of the Nation in February 2021, case No. 2637/2004.

[40] The following document, sent by the representative on September 8, 2020: undated document filed by Eduardo Marques Iraola before the Supreme Court of Justice of the Nation.

[41] The following documents, cited by the representative in its brief of November 30, 2020: i) record of the hearing of the oral proceeding on October 23, 2020, and ii) news article on calling of a hearing by the Roma Court of Cassation.

this document describes the coordinated repression during "Operation Condor." The Court notes that the article published after the pleadings and motions brief, whose hyperlink was included by the representative in its brief of July 12, is related to the context in which the facts of this case took place, and it therefore admits the document.[42]

51. In a brief dated August 17, 2021, the representative submitted a number of documents referring to a domestic judicial proceeding, indicating that "it [was] not raising a new fact." The State asked that the documents not be admitted because they were time-barred. The Court notes that the documents submitted are from judicial proceedings dating back to 2016. Therefore, because none of the conditions established in Article 57(2) of the Rules of Procedure apply, nor have the documents been requested by the Court, they are not admitted.

52. Additionally, the State and the representative forwarded different documents in response to the requests made by the President, pursuant to Article 58(b) of the Rules of Procedure (*supra* para. 12), which are therefore admitted.[43] However, when presenting its final arguments, on June 11, 2021, the State submitted two other documents that do not correspond to the request made and whose submission was not justified on any of the grounds provided for in Article 57(2) of the Rules of Procedure. Additionally, they do not refer to events subsequent to the answering brief. Therefore, they are not admitted.[44]

53. Lastly, the Court recalls that, in accordance with its case law, news articles[45] and audiovisual material[46] provided by the parties are admitted and taken into account when they refer to well-known public facts or statements by State officials, or when they corroborate certain aspects of the case, as long as their source and publication date can be verified.[47] Therefore, the Court decides to admit the documents that are complete or at the least, whose sources and publication dates can be verified. It will assess them, taking into account the whole body of evidence, the observations of the parties, and the rules of sound judicial discretion.[48]

B. Admissibility of expert statements and evidence

54. This Court finds it pertinent to admit the statements provided by affidavit[49] and during the public hearing[50] insofar as they are in keeping with the purpose defined by the President

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[42] The following document: article published by *France 24* on July 9, 2021, entitled "Condena definitiva a cadena perpetua en Italia para 14 represores sudamericanos por Plan Cóndo.".

[43] Annexes forwarded by the State in briefs dated May 14, June 11, July 1, and July 16, 2021 (evidence file, volumes XIV, XVI, XVII, and XIX, folios 17063 to 17830, 18147 to 21081, and 21108 to 21249), and annexes forwarded by the representative in briefs dated June 11 and July 15, 2021 (evidence file, volumes XV and XVIII, folios 17831 to 18146, and 21082 to 21107).

[44] These are the following documents: a) certification of "the records of communication between the Secretary [of National Federal Criminal and Correctional Court No. 3] with collaboration in case [No.] 2637/04, with the victims Anatole and Victoria," via email, and (b) official letter of June 10, 2021, whereby the head of the aforementioned court sent the certification to the Undersecretary for Protection and International Coordination on Human Rights of the Ministry of Justice and Human Rights.

[45] *Cf.* Annex V to the pleadings and motions brief (evidence file, volume III, folio 2735), and annexes submitted by the representative on September 8, 2020, and July 12, 2021, and by the State on November 16, 2020 (evidence file, volume VII, annexes on supervening facts, folios 15968 to 15975).

[46] *Cf.* Annex X to the pleadings and motions brief (evidence file, volume III), and annexes sent by the parties in response to the request for evidence to facilitate adjudication of the case (evidence file, volumes XVIII and XIX).

[47] *Cf. Case of Velásquez Rodríguez v. Honduras.* Merits, *supra*, par. 146, and *Case of Ríos Avalos et al. v. Paraguay. Merits, Reparations, and Costs.* Judgment of August 19, 2021. Series C No. 429, par. 19.

[48] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits.* Judgment of March 8, 1998. Series C No. 37, para. 76, and *Case of Ríos Avalos et al. v. Paraguay, supra* par. 19.

[49] The Court received the expert opinion of Francesca Lessa rendered before public attestor (evidence file, volume XII, affidavits, folios 16992 to 17057).

[50] In a public hearing, the Court heard the testimony of Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez. At the same hearing, the expert opinions of Pablo Parenti, María José Guembe, and Juan Ernesto Méndez were rendered, expert opinions that were also received in writing (evidence file, volumes XI and XIII, folios

and by the Court ordering their receipt, as well as with the subject matter of this case.[51]

VI
FACTS

55. The facts of this case will be determined by the Court based on the factual framework presented by the Commission, the arguments of the parties, and the evidence provided. In this regard, it should be noted that Argentina explicitly indicated that the facts "referring to the crimes perpetrated by the […] dictatorship […] in the framework of State terrorism and in the context of the coordinated repression of the Condor Plan, are not in dispute," and that "it cannot and does not wish to discount the very serious facts that caused deep harm to the Julien Grisonas family."

56. In this regard, it is necessary to highlight the historical significance of the case, since the context in which the facts took place was the result of specific coordination between States within the framework of a doctrine of national security and persecution of those classified as "subversives," all of which resulted in systematic human rights violations.[52] In this regard, to understand them better, the facts will be set forth as follows: (a) context; (b) relevant regulatory framework; (c) facts committed to the detriment of the Julien Grisonas family, and (d) judicial and administrative proceedings. The facts prior to the date of ratification of this Court's contentious jurisdiction by Argentina are provided as background.

A. Context

A.1. The dictatorship in Argentina during the period 1976-1983

57. On March 24, 1976, the commanding generals of the Argentine Armed Forces carried out a coup d'état that overthrew the constitutional government of María Estela Martínez de Perón. A military junta was set up and assumed political power.[53] As of that date, a dictatorship[54] was established that, under the name of "National Reorganization Process," lasted until December 10, 1983.[55]

58. In order to pursue this "National Reorganization Process," the military junta established, *inter alia*, the following purpose: "Restore the essential values that serve as the foundation for the integral management of the State, [...] eradicate subversion and promote economic development […] in order to ensure the […] establishment of a republican, representative, and federal democracy."[56] Based on this, the junta "ended by decree the term of office" of the President, dissolved the National Congress, and removed the members of the Supreme Court

16890 to 16990 and 17058 to 17060).

[51] The purposes of the testimony are established in the Order of the President of the Court of March 24, 2021, and in the Order of the Court of April 19, 2021.

[52] *Cf. Case of Goiburú et al. v. Paraguay. Merits, Reparations, and Costs.* Judgment of September 22, 2006. Series C No. 153. pars. 61(5) and 61(6), and *Case of Gelman v. Uruguay*, *supra*, par. 44.

[53] *Cf.* Judgment issued by the National Federal Criminal and Correctional Appeals Chamber of the Federal Capital on December 9, 1985, case No. 13/84 (*supra* footnote 37).

[54] In this Judgment, mentions of the "dictatorship," the "military government," or other similar references refer to the political regime established during 1976-1983 in Argentina.

[55] On December 10, 1983, the constitutional institutions were reestablished with the inauguration of Raúl Alfonsín as President of the Nation. See *El Nunca Más y los crímenes de la dictadura*. Ministry of Culture, Presidency of the Argentine Nation, Edición Cultura Argentina, pages. 13, 15, and 30 (*supra* nota a pie de Page 37).

[56] *Cf*. "Act establishing the purpose and basic objectives of the National Reorganization Process," issued by the Military Junta on March 24, 1976, document cited in the judgment issued by the National Federal Criminal and Correctional Appeals Chamber of the Federal Capital on December 9, 1985, case No. 13/84.

of Justice of the Nation, among other authorities.[57]

A.2. The plan for systematic repression during the dictatorship

59. During the period of the military government, a "systematic and widespread plan for repression of the civilian population" was implemented and executed, justified by the "fight against subversion." Although the repressive actions began prior to the coup d'état, it was after the coup that "the forced disappearance of persons was employed as a systematic methodology under a plan designed by the State,"[58] establishing a systematic practice of "State terrorism."[59]

60. This plan, characterized by its secrecy, included the following actions, described by Argentine courts of law as "serious human rights violations" and "crimes against humanity":

> (a) abducting those suspected of having ties to subversion […]; (b) taking them to places located in military units or controlled by them; (c) interrogating them using torture […]; (d) subjecting them to inhuman living conditions […]; (e) carrying out all these actions in complete secrecy, with the kidnappers hiding their identities, […] keeping the victims incommunicado, denying information to any authority, relative, or close friend on the abduction or the location where they were being held[;] and (f) giving broad leeway to lower-ranking officials to determine the fate of the abducted person, who could be released, placed at the disposal of the National Executive Branch, subjected to military or civil proceedings, or physically eliminated. […] Likewise, the impunity of the executors was guaranteed by policies of non-interference with their procedures, concealing the truth in response to requests for information, and using State power to convince the public […] that the complaints made were false […].[60]

A.3. Coordinated repression in the context of "Operation Condor"

61. The context in which the facts of this case occurred is connected with the inter-State coordination aimed at guaranteeing the persecution of those classified as "subversive elements" in the framework of "Operation Condor." The existence of this operation was recognized by this Court in the cases of *Goiburú et al. v. Paraguay* and *Gelman v. Uruguay*, as follows:

> Most of the Southern Cone's dictatorial governments assumed power or were in power during the 1970s […]. The ideological basis of all these regimes was the "national security doctrine," which regarded leftist movements and other groups as "common enemies," whatever their nationality. […]This was the context of the so-called "Operation Condor," a code name given to the alliance of the security forces and intelligence services of the Southern Cone dictatorships in their repression of and fight against individuals designated "subversive elements." […] [D]uring the 1970s, the intelligence services of several countries of the Southern Cone of the Americas established a criminal inter-State organization with a complex assemblage, the scope of which is still being revealed today […].[61]

62. Argentine courts have also recognized the existence of "Operation Condor," having detailed its scope, objectives, and modes of action, with specific reference to what took place domestically starting in 1976 regarding foreigners who tried to escape the political persecution

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[57] *Cf*. "Act for the National Reorganization Process," issued by the Commander Generals of the Argentine Armed Forces on March 24, 1976, document cited in the judgment issued by the National Federal Criminal and Correctional Appeals Chamber of the Federal Capital on December 9, 1985, case No. 13/84.

[58] *Cf. Nunca Más. Informe de la Comisión Nacional sobre la Desaparición de Personas*, Buenos Aires, Eudeba, 1984, chapter I.B, (*supra* footnote 37), and "El Nunca Más y los crímenes de la dictadura." Ministry of Culture, Presidency of the Argentine Nation, Edición Cultura Argentina, pg. 22.

[59] *Cf. Mutatis mutandis*, *Case of Goiburú et al v. Paraguay, supra* par. 66; and *Case of Gelman v. Uruguay*, *supra*, par. 99.

[60] *Cf.* Judgment issued by the Supreme Court of Justice of the Nation on December 30, 1986, upholding the Judgment of the National Federal Criminal and Correctional Appeals Chamber of the Federal Capital, case No. 13/84 (*supra* footnote 37). See judgment issued by Federal Oral Criminal Court No. 1 on May 31, 2011, case No. 1627 (evidence file, volume I, annex 2 to the Report on the Merits, folios 924 and 1404).

[61] *Case of Goiburú et al. v. Paraguay, supra* pars. 61(5), 61(6) and 72, and *Case of Gelman v. Uruguay*, *supra*, par. 44.

of which they were victims.[62]

63. "Operation Condor" amounted to “repression coordinated among the South American dictatorships" framed within a period "of persecution of political opponents without borders,"[63] reflected in a variety of actions, including the following: (a) political surveillance of exiled dissidents or refugees, with subsequent exchange of information; (b) covert counterinsurgency actions, and (c) joint extermination actions directed against specific groups or individuals, for which "special teams were formed" that, “within and outside the borders of their countries,"[64] committed kidnappings, torture, murders, and forced disappearances, among other crimes.

64. Between 1973 and 1974,[65] because of the prevailing political situation in the region, people of different nationalities sought refuge in Argentine territory. However, following the establishment of the dictatorship in Argentina in 1976, the repressive actions of "Operation Condor" against activists and opponents of the dictatorial governments in the region intensified there.[66] Among other actions carried out within the framework of Operation Condor, between July and October 1976, joint operations were conducted by Argentine and Uruguayan security forces “in which more than 60 persons of Uruguayan nationality [were] kidnapped in Buenos Aires.”[67]

65. The repressive activities carried out during the period of the military government in Argentina in the context of "Operation Condor" included the "systematic and widespread practice" of “abducting, holding, and hiding" children after their parents went missing or were executed.[68] Domestic courts have recognized the use of this practice during the time of the dictatorship, as follows:

> [T]he shared pattern was that all the mothers of the abducted children—as well as almost all the fathers—were victims of the repression […] and as a result, the children were left at the mercy of the forces who took part in disposing of them […]. After the abduction was carried out, the children appear to have been sent to a variety of different destinations, although in no case were they turned over to their relatives despite the constant, insistent, and diverse claims and searches carried out consistently by [them], before both national and international authorities […]. [I]t has been possible to prove the existence of a systematic and widespread practice of abducting, holding, and hiding minors—including by making their identities uncertain, altering them, or suppressing them—on the occasion of the kidnapping, captivity, disappearance, or death of their mothers in the context of a general plan of annihilation that was deployed against part of the civilian population on the grounds of combatting subversion, implementing methods of State terrorism from 1976 to 1983 […].[69]

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62 *Cf.* Judgment issued by Federal Oral Criminal Court No. 1 on August 9, 2016, case No. 1504, 1951, 2054, and 1976 (evidence file, volume IV, annex 8 to the answering brief, folios 5354 and 5363).

63 *Cf.* Expert report signed by Francesca Lessa (evidence file, volume XII, affidavits, folio 16994).

64 *Cf. Case of Gelman v. Uruguay*, *supra*, par. 51, and Judgment issued by the Federal Oral Criminal Court No. 1 on August 9, 2016, case No. 1504, 1951, 2054, and 1976 (evidence file, volume IV, annex 8 to the answering brief, folio 5375).

65 Although "Operation Condor" was formalized in November 1975, there is evidence of repressive actions in Argentina starting from the end of 1973 and beginning of 1974. *Cf. Case of Gelman v. Uruguay*, *supra*, par. 47.

66 According to expert witness Francesca Lessa, Argentina was the country where the coordinated repression took place with greater intensity, especially in the city and province of Buenos Aires. *Cf*. Expert report signed by Francesca Lessa (evidence file, volume XII, affidavits, folios 16996 and 17001).

67 *Cf. Case of Gelman v. Uruguay*, *supra*, par. 56. According to the expert witness Francesca Lessa, the largest number of victims of Operation Condor were Uruguayan nationals, especially political opponents who were in Argentine territory between 1976 and 1978. *Cf*. Expert report signed by Francesca Lessa (evidence file, volume XII, affidavits, folio 16996, 16998 to 17001).

68 The Working Group on Forced or Involuntary Disappearances indicated that “[a] specific phenomenon that occurred […] during the time of the military dictatorship from 1976 to 1983 in the Argentine Republic was the forced disappearance of children,” adding that “[t]he boys and girls were abducted, stripped of their identities, and taken from their relatives.” *Cf.* Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Argentina, January 5, 2009, UN Doc. A/HRC/10/9/Add.1, para. 10.

69 *Cf.* Judgment issued by Federal Oral Criminal Court No. 6 on September 17, 2012, cases No. 1351, 1499, 1604, 1584, 1730, and 1772 (evidence file, volume IV, annex 18 to the answering brief, folios 15446, 15465, and

A.4. The "Automotores Orletti" secret detention and torture center

66. The policy of repression during the dictatorship included the secret implementation and operation of detention centers to which illegally detained persons were transferred. Once in these centers, people were subjected to inhumane conditions, which in some cases included acts of torture or execution. Meanwhile, the authorities refused to provide any information in response to requests and actions from relatives on victims' detention and transfer, or where they were being held.[70] One of these centers was known as "Automotores Orletti," whose existence was recognized by this Court in the case of *Gelman v. Uruguay*.[71]

67. Automotores Orletti was a secret detention and torture center which operated from May through November 1976, and where several coordination operations and other actions were carried out within the framework of Operation Condor. The center operated under the State Intelligence Secretariat, and people reportedly observed there were associated with the Argentine Anticommunist Alliance, known as Triple A, as well as Uruguayan military personnel and security forces "at a time when a large number of Uruguayan victims were being held there."[72]

68. In addition to recognizing the existence of Automotores Orletti, the Argentine courts have also described its operation and the conditions to which the persons transferred there were subjected, as follows:

> [T]he building where […] Automotores Orletti operated was located at Venancio Flores Street [No.] 3,519/21, between Emilio Lamarca and San Nicolás Streets in the Flores neighborhood of [the city of Buenos Aires]. […] [T]he victims […] were mostly kidnapped from their own homes or on public roads. […] Once victims arrived there […] they were subject to physical torture and interrogations. The physical torture basically consisted of stripping people naked, tying their arms behind them, and hanging them from a kind of hook or pulley and then […] applying electric current to them. At the same time, their bodies were wet and water and/or salt was also placed underneath them […] to increase the flow of electrical current when the feet touched the ground. This was frequently accompanied by blows to different parts of the body. After the torture and joint interrogation, the victims were placed in different rooms or areas […], always blindfolded or hooded and in many cases with their hands tied. [T]he victims had to continually listen to the torture of the other captives. […] They were even forced to witness the physical torment of their loved ones.[73]

A.5. Report of the National Commission on the Disappearance of Persons (CONADEP) and other actions aimed at establishing and providing reparations for what happened during the military government

69. With the restoration of democracy and constitutional institutions at the end of 1983, President Raúl Alfonsín ordered the formation of the National Commission on the

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15518). See *Case of Gelman v. Uruguay*, *supra*, pars. 61 to 63, and expert opinion of Pablo Parenti, rendered in a public hearing before this Court.

70 *Cf. Nunca Más. Informe de la Comisión Nacional sobre la Desaparición de Personas*, Buenos Aires, Eudeba, 1984, Chapter I.D, "Centros Clandestinos de Detención (C.C.D.)." See Judgment issued by the National Federal Criminal and Correctional Appeals Chamber of the Federal Capital on December 9, 1985, case No. 13/84.

71 *Cf. Case of Gelman v. Uruguay*, *supra*, pars. 53 and 54.

72 *Cf. Nunca Más. Informe de la Comisión Nacional sobre la Desaparición de Personas*, Buenos Aires, Eudeba, 1984, Chapter I.D, "Centros Clandestinos de Detención (C.C.D.)," "Automotores Orletti" (LRD), and Judgment issued by the Federal Criminal and Correctional National Appeals Chamber of the Federal Capital, case No. 13/84. The "Triple A" was "the expression of terror […] in the context of kidnappings, assassinations, [and] attacks," whose membership "included police officers, soldiers, and officials and staff from the intelligence services." *Cf.* Resolution issued by the National Federal Criminal and Correctional Court No. 3 on May 19, 2011, case No. 2637/04 (evidence file, volume I, annex 1 to the Report on the Merits, folios 37, 38, 40, and 156).

73 *Cf.* Judgment issued by Federal Oral Criminal Court No. 1 on May 31, 2011, case No. 1627 (evidence file, volume I, annex 2 to the Report, folios 1060, 1318, and 1390). See judgment issued by Federal Oral Criminal Court No. 1 on March 3, 2021, case No. 3002 (evidence file, volume X, annexes on supervening facts, folios 16303 and 16319).

Disappearance of Persons (hereinafter also "CONADEP"), whose objective was to "[i]ntervene actively in establishing the facts involved in the disappearance of persons in the country, finding out their fate or whereabouts as well as any circumstance pertinent to locating them." CONADEP prepared 7,380 files referring to complaints from relatives of disappeared persons, testimonies from those who had managed to escape from clandestine detention centers, and statements from members of the security forces who participated in the repressive actions.[74]

70. In September 1984, CONADEP issued its final report, called *Nunca Más*, in which it established there were approximately 340 clandestine detention centers in the country and concluded that "tens of thousands of people" had been "illegitimately deprived of their freedom," many of whom were missing.[75]

71. Also, in December 1983, the National Executive Branch ordered the nine senior officers who were members of the first three Military Juntas that had governed since the 1976 coup d'état "to be put on trial."[76] In this regard, the National Chamber of Federal Criminal and Correctional Appeals issued the Judgment of December 9, 1985, convicting five of the defendants and acquitting another four. In doing their work, the prosecutors in charge of the case relied on the content of the final report of CONADEP. The trial revealed, among other things, the existence of a systematic plan of repression during the military government. The judgment of the Chamber was upheld by the Supreme Court of Justice of the Nation on December 30, 1986.[77]

72. However, on December 24, 1986, Law No. 23,492, known as the "full stop" law, was enacted, and on June 8, 1987, Law No. 23,521, known as the "due obedience" law, was enacted (*infra* paras. 76 and 77). To these bodies of law, described as "laws of impunity," were added the executive orders issued by President Carlos Menem in 1989 and 1990, pardoning "high-ranking personnel" not covered by these laws, including the members of the military juntas who had previously been prosecuted.[78] This body of law taken as a whole made it impossible to investigate, prosecute, and punish the crimes committed during the dictatorship.[79]

73. On March 6, 2001, a federal judge declared the content of Laws No. 23,492 and 23,521 invalid, unconstitutional, and "null and void." The decision was upheld on November 9, 2001 by Chamber II of the National Chamber of Appeals for Federal Criminal and Correctional

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74 *Cf. Nunca Más.* Report of the National Commission on the Disappearance of Persons, Buenos Aires, Eudeba, 1984, chapter IV, "Creación y organización de la CONADEP," and chapter VI, "Conclusiones." See expert opinions of Pablo Parenti and María José Guembe, rendered in a public hearing before this Court.

75 *Cf. Nunca Más.* Report of the National Commission on the Disappearance of Persons, Buenos Aires, Eudeba, 1984, chapter I.B, "El secuestro"; chapter I.D, "Centros Clandestinos de Detención (C.C.D.)"; chapter IV, "Creación y organización de la CONADEP," and chapter VI, "Conclusiones."

76 During the period of the military government, in September 1983, Law No. 22,924, the "National Pacification Law" was enacted, article 1 of which declared "expunged all criminal prosecutions arising from crimes committed with terrorist or subversive motivation or purpose." However, on December 27, 1983, Law No. 23,040 was promulgated, which "[r]epeal[ed Law No. 22,924] as unconstitutional and declared [it] null and void." *Cf.* Written expert opinion rendered by Pablo Parenti (evidence file, volume XI, written expert opinions, folios 16896 and 16897).

77 The trial of the members of the Military Juntas for "the crimes of homicide, illegal deprivation of liberty, and torture of detainees," among other charges, was ordered through Decree No. 158/83 of December 13, 1983. *Cf.* Judgment issued by the National Federal Criminal and Correctional Appeals Chamber of the Federal Capital on December 9, 1985, case No. 13/84, and judgment issued by the Supreme Court of Justice of the Nation on December 30, 1986, upholding the Judgment of the National Federal Criminal and Correctional Appeals Chamber of the Federal Capital of December 9, 1985.

78 The State mentioned Decrees No. 1002/89, 1004/89, 1005/89, 2741/90, and 2743/90.

79 In view of these legal obstacles, human rights organizations, relatives of disappeared persons, and judicial authorities took joint action to hold the so-called "truth trials," starting in 1998. "Although they could not determine criminal responsibility and punish those responsible, they did serve to bring to light, in specific situations, multiple cases of forced disappearance." *Cf.* Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Argentina, January 5, 2009, UN Doc. A/HRC/10/9/Add.1, para. 56.

Matters. Subsequently, on September 2, 2003, the National Congress enacted Law No. 25,779, which declared both laws "null and void" (*infra* para. 78). For its part, in a judgment handed down on June 14, 2005, in the case known as "Simón," the Supreme Court of Justice of the Nation found Law No. 25,779 to be "valid" and "Laws No. 23,492 and 23,521 to have no effect."[80] The overturning of these laws made it possible to reopen and launch different processes to prosecute crimes committed during the military government.[81]

74. The Argentine State also implemented a reparations policy for the victims of the crimes of the dictatorship and their heirs,[82] which included different administrative mechanisms for financial reparation.[83] Among other provisions, in 1994, Law No. 24,411 was enacted, which established financial benefits would be granted to disappeared or deceased persons, "through their heirs." In 2004, Law No. 25,914 was issued, which established compensation for those persons "born while their mothers were in detention," as well as "those who, as minors, had been held in any kind of detention in relation to their parents," or that "had been victims of identity switch." Law No. 26,913 was enacted in 2013. Entitled the "System of Redress for former Political Prisoners of the Argentine Republic," it created an "*ex gratia* pension" whose beneficiaries included those who until December 10, 1983, had been held in detention "as a result of the actions of the Armed Forces, the Security Forces, or any other group" (*infra* paras. 81, 82 and 83).

B. Relevant legal framework

75. In the area of criminal prosecution of crimes committed during the dictatorship in Argentina, Laws No. 23,492, 23,521, and 25,779 are relevant (*supra* paras. 72 and 73).

76. The pertinent part of Law No. 23,492[84] ("full stop" law) established as follows:

> Article 1. [The time period for bringing] criminal action with regard to any person for their alleged involvement in any capacity in the offences referred to in Art. 10 of Law 23,049,[85] who is not a fugitive, has not been declared to have absconded and who has not been summoned to make a statement in answer to charges [...] shall expire within sixty days from the date of enactment of this law. The same conditions apply to criminal action brought against any person who may have committed offences connected with the use of violent forms of political action prior to 10 December 1983.

77. Law No. 23,521[86] ("due obedience" law) established as follows in its relevant parts:

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[80] *Cf.* Judgment issued by the Supreme Court of Justice of the Nation on June 14, 2005, case of "Simón, Julio Héctor *et al*. regarding illegitimate deprivation of liberty, etc. – case no. 17,768–" (*supra* footnote 37).

[81] *Cf.* Order of July 17, 2020 issued by the National Federal Criminal and Correctional Court No. 3 (evidence file, volume IV, annex 14 to the answering brief, folio 10985), and written expert opinion rendered by Pablo Parenti (evidence file, volume XI, written expert opinions, folios 16903 to 16907 and 16911). See *El Nunca Más y los crímenes de la dictadura*. Ministry of Culture, Presidency of the Argentine Nation, Edición Cultura Argentina, pg. 26.

[82] See, *inter alia*, Decree No. 1259/2003 of December 16, 2003, which provides for the creation of the National Memory Archive, available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/90000-94999/91115/texact.htm, and Law no. 26,691, promulgated on July 27, 2011, whose article 1 establishes as follows: "Declare Sites of Memorial to State Terrorism [...] the locations that operated as clandestine detention, torture and extermination centers [...] during the State terrorism carried out in the country until December 10, 1983," available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/180000-184999/184962/norma.htm.

[83] See *Case of Almeida v. Argentina. Merits, Reparations, and Costs.* Judgment of November 17, 2020. Series C No. 416. pars. 30 to 32.

[84] Law No. Law 23,492, promulgated on December 24, 1986. Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/20000-24999/21864/norma.htm.

[85] Law No. 23,049, promulgated on February 13, 1984. Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/28157/norma.htm. Article 10 refers, in section 1, to crimes "attributable to military personnel [...], and [...] to security, police and penitentiary forces under the control [...] of the Armed Forces and who acted [...] in the operations undertaken with the alleged motive of repressing terrorism," during the period from "March 24, 1976 [to] September 26, 1983."

[86] Law No. 23,521, promulgated on June 8, 1987. Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/20000-24999/21746/norma.htm.

> Article 1 - Unless evidence has been admitted to the contrary, it is presumed that those who at the time the act was committed held the position of commanding officers, subordinate officers, noncommissioned officers and members of the rank and file of the Armed Forces, security forces, police force and prison force are not punishable for the offences referred to in article 10 point 1 of law number 23,049 on the grounds that they were acting by virtue of due obedience. [...] In such cases the persons mentioned shall automatically be deemed to have acted in a state of coercion under the subordination of the superior authority and in compliance with orders, without the power or possibility of inspecting, opposing or resisting them in so far as their timeliness or legitimacy were concerned.

78. Article 1 of Law No. 25,779[87] established the following: "Laws [No.] 23,492 and 23,521 are declared null and void."

79. Law No. 26,679[88] modified the National Penal Code, Law No. 11,179,[89] and added, among other provisions, article 142(3) with the following text:

> A prison sentence of ten (10) to twenty-five (25) years and absolute and perpetual disqualification from holding any public office and from private security tasks will apply to a civil servant or a person or member of a group of persons who, acting with the authorization, support, or acquiescence of the State, in any way deprives of liberty one or more persons, when this action is followed by the lack of information or the refusal to recognize the deprivation of liberty or to report the person's whereabouts. The sentence shall be life in prison if the victim dies or if the victim is a pregnant woman, a person under eighteen (18) years of age, a person over seventy (70) years of age, or a person with a disability. The same sentence shall apply when the victim is a person born during the forced disappearance of his or her mother [...]

80. Regarding the legal system of redress for the victims of the 1976-1983 dictatorship, Laws No. 24,411, 25,914, and 26,913 are relevant.

81. Law No. 24,411[90] establishes the following in its relevant parts:

> Article 1. Persons who at the time of the promulgation of this law are in a situation of forced disappearance shall have the right to receive, through their successors, a one-time special benefit equivalent to the Step A monthly salary scale for civilian employees in the federal public administration [...].

82. Law No. 25,914[91] established the following in its pertinent section:

> Article 1. Persons born during the deprivation of liberty of their mother or who, being minors, were in any circumstance detained in relation to their parents, so long as the latter were detained and/or detained-disappeared for political reasons [...] may avail themselves of the benefits instituted in this law. Those persons who, due to any of the circumstances established herein, have been victims of change in identity shall receive the reparations determined by this law. [...]
>
> Article 4 - The benefit [...] will consist of the one-time payment of a sum equivalent to [twenty] (20) times the monthly remuneration of Level A, Grade 8 officers of the National Administrative Profession System [...]. When [...] beneficiaries have had their identities restored, they will receive [...] an indemnity equivalent to the provisions of Law [No.] 24,411 [...]. If [...] the beneficiary suffered serious or very serious injuries—according to the classification of the Penal Code—or died, the benefit will be increased by [fifty percent] (50%), [seventy percent] (70%) and [one hundred percent] (100%), respectively.

83. Law No. 26,913, "System of Redress for former Political Prisoners of the Argentine

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[87] Law No. 25,779, enacted on September 2, 2003. Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/88140/norma.htm.

[88] Law No. 26,679, enacted on May 5, 2011. Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/180000-184999/181888/norma.htm.

[89] Law No. 11,179, "Criminal Code of the Nation." Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#19.

[90] Law No. Law 24,411, enacted on December 28, 1994. Article 6 establishes: "The request for the benefit shall be made before the Ministry for Interior Affairs [...]". Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/793/texact.htm.

[91] Law No. Law 25,914, enacted August 25, 2004. Article 3 establishes: "The request for the benefit shall be made before the Ministry of Justice, Security, and Human Rights [...]." Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/95000-99999/97981/norma.htm.

Republic"[92] establishes the following in its pertinent part:

> Article 1 - An *ex gratia* pension is established for those persons who, as of December 10, 1983, meet any of the following requirements: (a) have been […] deprived of their liberty as a result of the actions of the Armed Forces, Security Forces or any other group […]. The beneficiary status of those covered by Laws 25,914 and 24,043 shall be automatic, as their situation has been demonstrated […].
>
> Article 5 - The benefit […] shall be equal to the monthly remuneration assigned to Category D Level 0 (zero), Unclassified Permanent Staff […] of the salary scale of the National Public Employment System […].

84. Regarding the statute of limitations, the Civil and Commercial Code of the Nation, Law 26,994[93] establishes in its article 2560,[94] first paragraph, the following: "Civil actions stemming from crimes against humanity are not eligible for the statute of limitations."

C. Facts committed to the detriment of the Julien-Grisonas family

85. This Court will proceed to determine the facts perpetrated against the alleged victims based on the evidence provided,[95] for which it will take into account that the factual framework set forth in the Report on the Merits (*supra* para. 55) is not in question.

C.1. The Julien-Grisonas family

86. The Julien Grisonas family was comprised of Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite, along with their children, Anatole Boris and Victoria Eva (*supra* footnote 1). Julien Cáceres was born in Montevideo, Uruguay, on April 29, 1943. Ms. Grisonas Andrijauskaite was born in Buenos Aires, Argentina, on April 16, 1945 and subsequently obtained Uruguayan nationality. They were married on December 27, 1968. Anatole Boris was born in Montevideo, Uruguay, on September 25, 1972, and Victoria Eva was born in Buenos Aires, Argentina, on May 7, 1975.

87. Mario Roger Julien Cáceres worked as a ceramicist and graphic artist in Uruguay, where he was also a student at the School of Fine Arts. He was part of the political opposition and a member of the *Partido por la Victoria del Pueblo* (Party for the Victory of the People, PVP). He was prosecuted and held in custody in the Punta Carretas prison in Uruguay, from which he fled in September 1971 as part of a mass escape. In 1973, before the establishment of the

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[92] Law No. 26,913, "Reparations Regime for former Political Prisoners of the Argentine Republic," enacted on December 16, 2013. Article 6 establishes: "The Human Rights Office of the Ministry of Justice and Human Rights of the Nation will be the body in charge of applying this regime […]." Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/220000-224999/224027/norma.htm.

[93] Law No. 26,994, "Civil and Commercial Code of the Nation," enacted on October 7, 2014 and in force as of August 1, 2015 (article 7). Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/235000-239999/235975/texact.htm.

[94] The original text of article 2560 established as follows: "Generic term. The term for prescription shall be five years, unless a different term is established in local legislation." For its part, the original text of the last paragraph of article 2561 established as follows: "Civil actions derived from crimes against humanity are not eligible for prescription." Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/235000-239999/235975/norma.htm. Both articles were amended by Law No. 27,586, enacted on December 15, 2020, to incorporate the current regulation of article 2560 and repeal the last paragraph of article 2561. Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/345000-349999/345233/norma.htm.

[95] *Cf. Inter alia*, File No. 2951 (Julien Cáceres, Mario Roger) of the final report of CONADEP (evidence file, volume II, procedure before the Commission, folios 1729 to 1735); File No. 2950 (Grisonas, Victoria Lucía) of the final report of CONADEP located in case file No. 14,846/96 (evidence file, volume XV, evidence to facilitate adjudication of the case, folios 17905 to 17909); Judgment issued by Chamber II of the National Federal Administrative Court of Appeals on November 4, 2004, case No. 14,846/96, which appears in the CUDAP file: EXP-SO4:0055600/2016, Ministry of Justice and Human Rights (evidence file, volume IV, annex 6 to the answering brief, folios 2930 to 2947); Resolution issued by National Federal Criminal and Correctional Court No. 3 on May 19, 2011, case No. 2637/04 (evidence file, tome I, annex 1 to the Report on the Merits, folios 6 to 167), and Judgment issued by the Oral Federal Criminal Court No. 1 on March 3, 2021, case No. 3002 (evidence file, volume X, annexes on supervening facts, folios 16016 to 16882).

dictatorship in Uruguay as a result of a coup d'état, he moved to Argentina, where he obtained refugee status from the United Nations High Commissioner for Refugees (UNHCR). In 1974, he reunited with his wife and their son, Anatole, in Buenos Aires. Victoria Lucía Grisonas Andrijauskaite was also active in the political opposition and a member of the PVP.[96]

C.2. The operation of September 26, 1976

88. On the afternoon of Sunday, September 26, 1976, a police and military operation was carried out at the home of the Julien Grisonas family, located at Calle Mitre 1050, at the corner of Carlos Gardel Street in the of San Martín neighborhood, province of Buenos Aires. The operation was carried out jointly by multiple heavily armed members of the Argentine and Uruguayan security forces. Agents from the State Information Secretariat, the Department of Foreign Affairs of the Federal Security Superintendence of the Federal Police, and military personnel participated on behalf of the Argentine forces. The agents fired on the house and cut off the electricity and telephone lines in the sector; they also deployed a large number of vehicles, including two armored cars that cut off traffic at both ends of the block.

89. During the operation, Mario Roger Julien Cáceres tried to escape from the back of the house, but was caught by the authorities. Although the initial claim was that he committed suicide by ingesting a cyanide pill, the national courts have concluded that "he was murdered" during this operation, and to date there has been no information as to the whereabouts of his remains. Meanwhile, the agents detained Victoria Lucía Grisonas Andrijauskaite.

90. Regarding what happened, Anatole, who was four years old at the time of the facts, has testified in multiple judicial proceedings, as well as in the public hearing before this Court, that he recalls "holding [his] mother's hand, while she was holding [his] sister in her arms, hiding in some kind of [...] parking lot, [...] suddenly [he saw] blue sparks from shrapnel and a soldier appeared, who aimed [at] them directly." Likewise, "minutes before that, he remembers seeing [his] father [...] going to another spot and gesturing at [them] to keep silent and hide," and "look[ing]] back when they were taking [him] and [his] sister away and seeing [their] parents lying on the floor" with armed agents pointing guns at them, and "one of them was pulling [his] mother's hair."[97]

91. For her part, Victoria, on the occasion of an invitation from the "Grandmothers of Plaza de Mayo" Association, traveled to Argentina and went to the place where the operation took place to inquire about what had happened. There, she managed to identify a witness, Francisco Cullari,[98] who testified in multiple judicial proceedings on what happened. As for Julien Cáceres, the witness stated that he "went out into the street [...] through a house that was not his and that he was carrying a wet towel with him," but the authorities "identified him and [...] they detained him." Eventually, he saw "[his] body lying on Miter Street, by the curb outside the corner bar." Regarding Ms. Grisonas Andrijauskaite, he stated that "two or three people lifted her to shoulder height [...], held her parallel to the ground and dropped her over and over again, repeating this procedure until someone ordered them to stop." He added that "the man was lifted from the floor and placed in a vehicle, while the woman was taken away

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96 *Cf.* Brief filed on November 19, 2012 by Eduardo Marques Iraola, on behalf of Anatole Alejandro Larrabeiti Yáñez, before Federal Criminal and Correctional Court No. 3, case No. 2637/04 (evidence file, volume I, annex 4 to the Report on the Merits, folio 1442) and writ of application that appears in case file 14,846/96 (evidence file, volume XV, evidence to facilitate adjudication of the case, folio 17836). See Office of Human Rights for the recent past, Eastern Republic of Uruguay, detainees disappeared due to State responsibility and/or acquiescence, file on Julien Cáceres, Mario Roger, file L.D.D. No. 064 (*supra* footnote 37).

97 *Cf.* Statement of Anatole Alejandro Larrabeiti Yáñez, given in a public hearing before this Court, and statements of the same person that appear in: Judgment issued by Federal Oral Criminal Court No. 1 on May 31, 2011, case No. 1627 (evidence file, volume I, annex 2 to the Report on the Merits, folio 787).

98 *Cf.* Testimony of Claudia Victoria Larrabeiti Yáñez, found in the judgment issued by Federal Oral Criminal Court No. 6 on September 17, 2012, cases No. 1351, 1499, 1604, 1584, 1730, and 1772 (evidence file, volume IV, annex 18 to the answering brief, folio 15429).

alive." As for Anatole and Victoria, he stated that he had "asked that they be turned over […] to his custody […] [without] receiving a response from the captors."[99]

C.3. Detention in "Automotores Orletti" and subsequent transfer of Anatole and Victoria to Uruguay and Chile

92. After her detention, Victoria Lucía Grisonas Andrijauskaite was taken to Automotores Orletti. Anatole and Victoria were first taken by the agents to a service station and later driven to the same center. There, Grisonas Andrijauskaite was subjected to torture and inhuman conditions of detention; her whereabouts remain unknown.

93. In October 1976, Anatole and Victoria were transferred secretly, by air—via the so-called "second flight"[100]—to Uruguay, where they were held at the headquarters of the Defense Information Service (SID) in the city of Montevideo. The presence of both in Uruguay was established by this Court in the case of *Gelman v. Uruguay*.[101]

94. Subsequently, Anatole and Victoria were transferred to Chile, also by air, and abandoned in O'Higgins Plaza in the city of Valparaíso on December 22, 1976, where they were found by Chilean authorities. Initially they were housed at a shelter, and then they were separated and taken to different houses. In the end, Anatole and Victoria were placed "in the custody and care" of a married couple: Jesús Larrabeiti Correa and Sylvia Yáñez Vera, a dental surgeon and teacher, respectively, of Chilean nationality with no connection to the repressive apparatus. They were granted "judicial custody" in June 1977.[102]

C.4. The search for and discovery of Anatole and Victoria by their biological grandmother

95. Following what had happened, the paternal grandmother of Anatole and Victoria—María Angélica Cáceres de Julien—began searching for them. In doing so, she undertook multiple procedures before State institutions in Argentina and Uruguay, international organizations, and non-governmental organizations. She also reported the disappearance of her relatives to CONADEP, whose final report included files 2950 and 2951 on the disappearances of Victoria Lucía Grisonas Andrijauskaite and Mario Roger Julien Cáceres, respectively. Ms. Cáceres de Julien likewise filed different habeas corpus actions on behalf of her son, her daughter-in-law, her grandson, and her granddaughter. However, she received no response or information from the Argentine authorities.

96. Through the multiple steps taken in her search, and with the support of different people and entities—especially the organization Clamor of the Archbishopric of São Paulo—Ms.

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[99] *Cf.* Testimony of Francisco Cullari appearing in: Resolution issued by the National Federal Criminal and Correctional Court No. 3 on May 19, 2011, case No. 2637/04 (evidence file, volume I, annex 1 to the Report on the Merits, folios 100 and 101), and judgment issued by Federal Oral Criminal Court No. 1 on May 31, 2011, case No. 1627 (evidence file, volume I, annex 2 to the Report on the Merits, folios 444 and 445).

[100] According to Anatole, he remembers having "[gone] via a small plane […] and [he] was allowed to go to the cabin and in the cabin he saw big mountains covered in snow and also [he] was fascinated by the steering wheel, the crank." *Cf.* Statement by Anatole Alejandro Larrabeiti Yáñez, given at a public hearing before this Court. The Argentine courts have concluded that "the secret transfer […] by air of the group of hostages of Uruguayan nationality […] [was] carried out by the Uruguayan Air Force […] on at least two occasions ('first and second flight')." *Cf*. Judgment issued by Federal Oral Criminal Court No. 1 on August 9, 2016, case No. 1504, 1951, 2054, and 1976 (evidence file, volume IV, annex 8 to the answering brief, folios 4674 and 4675).

[101] *Cf. Case of Gelman v. Uruguay*, *supra*, par. 86. The Court established that María Claudia García Iruretagoyena and her daughter, María Macarena Gelman García, were "held in a room on [the] ground floor" of the SID, together with "the Julien-Grisonas siblings, with whom they shared the […] space."

[102] See judgment issued by the Third Juvenile Court of First Instance of Valparaíso, Chile, on June 28, 1990, case No. 4,527, cited in: Judgment issued by Federal Oral Criminal Court No. 6 on September 17, 2012, cases No. 1351, 1499, 1604, 1584, 1730, and 1772 (evidence file, volume IV, annex 18 to the answering brief, folio 15425).

Cáceres de Julien was able to determine the whereabouts of Anatole and Victoria in July 1979. She therefore traveled to the city of Valparaíso, where she met with her grandson and granddaughter. By then, the process for the Larrabeiti Yáñez couple to adopt Anatole and Victoria was in progress.[103] According to the Argentine courts, Anatole and Victoria were the first children found in the context of the crimes perpetrated during the dictatorship.

97. Ms. Cáceres de Julien and the Larrabeiti Yáñez couple reached an "agreement" on the identity, care, and "adoptive legitimacy" of Anatole and Victoria. In this sense, on August 2, 1979, they signed "a legal document presented before the Third Court for Minors of Valparaíso", in the following terms:

> We agree […] [in] that the minors […] have the identity of Anatole Boris Julien and Eva Grisonas [sic]. [M]s. María Angélica Cáceres de Julien and Mr. Luis Alberto Julien are the paternal grandparents […], while Ms. Lucía Andrijauskaite de Grisonas is [the] maternal grandmother […]. [B]oth of them […] are in good health […] and absolutely emotionally and affectively established in [the] Larrabeiti-Yáñez family […]. [B]earing in mind the best interest of the children […] Ms. María Angélica Cáceres de Julien, for herself and for her husband […] and for her mother-in-law […] accepts maintaining the current custody and care status of […] [the] children [and that] their birth certificates be kept […] under [the] names of Anatole Alejandro Larrabeiti Yáñez and […] Claudia Victoria Larrabeiti Yáñez, […]. [A]ll those appearing agree […] to proceed gradually and in the technically appropriate manner with reconnecting the two minors with their blood or natural relatives, informing them of their existence [and] scheduling periodic visits, and as far as possible, back and forth, with the blood relatives visiting the children and vice-versa […]."[104]

98. From that moment forward, Anatole and Victoria grew up with their adoptive parents in Valparaíso, where they had visits with their paternal grandmother. Although they were minors, they were informed of their identity and origin. They also traveled to Montevideo, Uruguay, where they met their other grandparents and blood relatives, with whom they "resum[ed] their family relationship." When asked about the name they wanted to adopt, they chose to keep the Larrabeiti Yáñez surnames. Anatole is a lawyer and works as a prosecutor in the city of Santiago. Victoria is a psychologist and lives in Valparaíso. As Anatole stated at the public hearing, Ms. Cáceres de Julien died in 1999.[105]

D. Judicial and administrative processes carried out

D.1. Criminal processes

99. Case No. 2637/04 was processed before National Federal Criminal and Correctional Court No. 3. The case was "separated" from case 14,216/03, processed before the same court after the "reopening of the judicial investigations" as a result of from the enactment of Law 25,779 in 2003 (*supra* paras. 73 and 78). Case 14,216/03 involves the investigation of certain facts attributed to military personnel that occurred from "March 24, 1976, [at] the end of the so-called 'National Reorganization Process,' […] having included […] events that occurred in 1974 and 1975." For its part, case 2637/04 "focused especially" on investigating events that took

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[103] See complaint included in case file No. 14,846/96 (evidence file, volume XV, evidence to facilitate adjudication of the case, folio 17856); note from the Asociación Abuelas de Plaza de Mayo dated May 13, 1997, addressed to the National Court of First Instance for Federal Administrative Litigation No. 4, case No. 14,846/96, which appears in the CUDAP file: EXP-SO4:0055600/2016, Ministry of Justice and Human Rights (evidence file, volume IV, annex 6 to the answering brief, folio 3060), and statement by Anatole Alejandro Larrabeiti Yáñez, which appears in: Judgment issued by Federal Oral Criminal Court No. 1 on March 3, 2021, case No. 3002 (evidence file, volume X, annexes on supervening facts, folio 16488).

[104] Notarial certificate of the court document signed on August 2, 1979, by Jesús Larrabeiti Correa, Sylvia Yáñez de Larrabeiti, and María Angélica Julien de Cáceres, which appears in CUDAP file EXP-SO4:0055600/2016, Ministry of Justice and Human Rights (evidence file, volume IV, annex 6 to the answering brief, folios 3093 to 3097).

[105] *Cf.* Statements of Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez, given at a public hearing and consisting of: Judgment issued by Federal Oral Criminal Court No. 6 on September 17, 2012, cases No. 1351, 1499, 1604, 1584, 1730, and 1772 (evidence file, volume IV, annex 18 to the answering brief, folios 15427 and 15431).

place in the Automotores Orletti secret detention and torture center.[106]

100. In the processing of case No. 2637/04, attorney Eduardo Marques Iraola, on behalf of Anatole Alejandro Larrabeiti Yáñez, submitted a brief on November 19, 2012, whereby he requested that he be considered "constituted as a party to the complaint."[107] The judge hearing the case agreed to the request on November 20, 2012. On December 10, 2012, he filed another brief in which he requested, among other things: (a) that specific procedures be carried out to locate and identify the remains of Julien Cáceres, for which he requested that "the intervention of the Argentine Forensic Anthropology Team" in order for it to carry out any "work that, in [their] judgment, […] was deemed pertinent"; (b) that the crimes committed to the detriment of Anatole and Victoria be investigated; (c) that the crimes committed against the property of the Julien Grisonas family be investigated, and (d) that the "fate of Victoria Grisonas" be investigated.[108] On September 18, 2017, the plaintiff requested the recusal of the judge in the case "for lacking impartiality and independence."[109] According to the judge in the case, the plaintiff later withdrew the accusation.[110]

101. In the framework of case No. 2637/04, five "segments" or parts have been brought to the oral trial stage before Oral Federal Criminal Court No. 1 of the Federal Capital. Regarding these "segments," "the facts that affected the Julien Grisonas family served […] as the object of the process in [four] of them," corresponding to the following cases, according to the record of that Oral Court: (a) No. 1627, known as "Automotores Orletti I" case; (b) No. 1976, in which the trial was held together with cases No. 1504, 1951, and 2054, a "mega-trial" known as "Operation Condor," "Plan Condor," or "Automotores Orletti II"; (c) No. 2261 and 2390, joined[111] for a single trial known as "Automotores Orletti III and IV", and (d) No. 3002, known as the "Automotores Orletti V." trial.[112] Below is a brief account of these processes.

102. In case 1627, the Oral Court issued its verdict on March 31, 2011, the reasoning for which was announced on May 31 of the same year. The judges found it proven, *inter alia*, that Ms. Grisonas Andrijauskaite "was illegally deprived of her liberty […] in the framework of an operation carried out by a large group of armed persons, […] she was transferred [to] Automotores Orletti, […] where she was subjected to torture and inhuman detention conditions," and, to date, "[r]emains missing." Three of the defendants were convicted of these acts[113] (*infra* para. 170). The decision was upheld by the Federal Chamber of Criminal

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106 *Cf.* Order of July 17, 2020 issued by the National Federal Criminal and Correctional Court No. 3 (evidence file, volume IV, annex 14 to the answering brief, folios 10984 and 10985).

107 *Cf.* Brief filed on November 19, 2012 by Eduardo Marques Iraola, on behalf of Anatole Alejandro Larrabeiti Yáñez, before Federal Criminal and Correctional Court No. 3, case No. 2637/04 (evidence file, volume I, annex 4 to the Report on the Merits, folios 1442 to 1451).

108 *Cf.* Brief filed on December 10, 2012, by Eduardo Marques Iraola, on behalf of Anatole Alejandro Larrabeiti Yáñez, before Federal Criminal and Correctional Court No. 3 in case No. 2637/04 (evidence file, volume I, annex 20 to the Report on the Merits, folios 1528 to 1544).

109 *Cf.* Brief filed on September 18, 2017, by Eduardo Marques Iraola, on behalf of Anatole Alejandro Larrabeiti Yáñez, before Federal Criminal and Correctional Court No. 3 in case No. 2637/04 (evidence file, volume I, annex 21 to the Report on the Merits, folios 1546 to 1562).

110 *Cf.* Order of July 17, 2020 issued by the National Federal Criminal and Correctional Court No. 3 (evidence file, volume IV, annex 14 to the answering brief, folio 11054).

111 In the judgment issued by Court IV of the Federal Chamber of Criminal Cassation on February 27, 2019, case No. 2637/2004, it was indicated that "[…] case No. 2261 and its combined case No. 2390, emerged from the splitting up of case No. 2637/ 2004" (evidence file, volume IV, annex 17 to the answering brief, folios 14319).

112 *Cf.* Official communication of July 13, 2020 issued by the Attorney General of the Assistance Unit for Cases of Human Rights Violations during State Terrorism of the Office of the Public Prosecutor of the Nation (evidence file, volume IV, annex 24 to the brief of response, folios 15918 and 15919) and official communication of July 15, 2020 issued by the Prosecutor of the Office of the Prosecutor for Crimes against Humanity of the Office of the Public Prosecutor of the Nation (evidence file, volume IV, annex 17 to the answering brief, folios 12343 and 12344).

113 *Cf.* Judgment issued by Federal Oral Criminal Court No. 1 on May 31, 2011, case No. 1627 (evidence file, volume I, annex 2 to the Report on the Merits, folios 1270, 1432, and 1437).

Cassation through the judgment of October 7, 2013.[114]

103. On May 27, 2016, the Oral Court issued its verdict in cases 1504, 1951, 2054, and 1976, whose reasoning was read out on August 9, 2016. In that judgment, the judges confirmed, among other facts, that Ms. Grisonas Andrijauskaite "was illegally deprived of her liberty," "was transferred [to] Automotores Orletti […] [where] she was subjected to torture and inhuman detention conditions," and, "[to] date, she remains missing". Based on this, one of the defendants was sentenced[115] (*infra* para. 171). The judgment was upheld by Court IV of the Federal Chamber of Criminal Cassation on May 4, 2018.[116]

104. On September 11, 2017, the Oral Court delivered its verdict in cases 2261 and 2390. The reasoning was issued on November 3, 2017. The judgment held as proven, among other facts, that Ms. Grisonas Andrijauskaite "was illegally deprived of her liberty […] during an operation […] carried out by […] members of the Argentine Army and personnel from the Department of Foreign Affairs of the Federal Police." "[Later] she was transferred [to] Automotores Orletti together with her children," and "[…] she remains missing." Based on this, two of the defendants were sentenced[117] (*infra* para. 172).

105. Within the framework of the same process, the Oral Court acquitted the defendants for the "homicide" of Julien Cáceres. In this regard, the judgment found that on the day of the operation, Julien Cáceres "escaped through the back of the house where he lived," but "was apprehended and transferred to the corner of Carlos Gardel […] and Miter streets, at which location […] he was 'gunned down.'" The judges argued that "[they] could not find that the murder was part of the 'shared plan' designed by the State's repressive forces, within the framework of the 'anti-subversive struggle.'" Consequently, "in view of a possible 'deviation' from the 'shared plan' […] they did not […] have evidence proving the defendants' involvement in that murder."[118]

106. For its part, on February 27, 2019, Court IV of the Federal Chamber of Criminal Cassation partially annulled the ruling "as regards the incident that caused harm to" Julien Cáceres, and upheld the rest of the decision. Thus, the Chamber ordered "[to return] the […] proceedings to the *a quo* court for review."[119] The defense attorneys filed extraordinary appeals against this decision, which were denied by the same court.[120] In response, the defense filed a motion for reconsideration of dismissal of appeal, which is awaiting a decision by the Supreme Court of Justice of the Nation. In view of the foregoing, in September 2019, the Oral Court ruled that "the jurisdictional body shall not rule [...] until the final judgment […] is issued, as indicated by the Chamber."[121]

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114 *Cf.* Official communication dated July 15, 2020 issued by the Prosecutor of the Office of the Prosecutor for Crimes against Humanity of the Office of the Public Prosecutor of the Nation (evidence file, volume IV, annex 17 to the answering brief, folio 12344), and official communication dated July 17, 2020 issued by National Federal Criminal and Correctional Court No. 3 (evidence file, volume IV, annex 14 to the answering brief, folio 11000).

115 *Cf.* Judgment issued by Federal Oral Criminal Court No. 1 on August 9, 2016, case No. 1504, 1951, 2054, and 1976 (evidence file, volume IV, annex 8 to the answering brief, folios 7579, 7580 and 8850).

116 *Cf.* Judgment issued by Court IV of the Federal Chamber of Criminal Cassation on May 4, 2018, case No. 13445/1999 (evidence file, volume IV, annex 17 to the answering brief, folios 14231 to 14233).

117 *Cf.* Judgment issued by Federal Oral Criminal Court No. 1 on November 3, 2017, cases 2261 and 2390 (evidence file, volume IV, annex 13 to the answering brief, folios 10347, 10348, and 10977).

118 *Cf.* Judgment issued by Federal Oral Criminal Court No. 1 on November 3, 2017, cases 2261 and 2390 (evidence file, volume IV, annex 13 to the answering brief, folios 10514, 10768, 10779, 10780, 10784, and 10979).

119 *Cf.* Judgment issued by Court IV of the Federal Chamber of Criminal Cassation on February 27, 2019, case No. 2637/2004 (evidence file, volume IV, annex 17 to the answering brief, folios 14445, 14449, and 14488).

120 *Cf.* Order issued by Court IV of the Federal Chamber of Criminal Cassation on July 5, 2019, case No. 2637/2004 (evidence file, volume IV, annex 17 to the answering brief, folios 14489 to 14495).

121 *Cf.* Resolution issued by Federal Oral Criminal Court No. 1 in September 2019, case No. 2261 (evidence file, volume IV, annex VII to the pleadings and motions brief, folios 2749 and 2750).

107. In case No. 3002, the Oral Court issued its verdict on November 27, 2020, and read out the reasoning for the decision on March 3, 2021. The judges established, *inter alia*, that "[Ms.] Grisonas [Andrijauskaite] and her children, Anatole and Victoria […], were illegally deprived of their liberty, and were […] transferred [to] Automotores Orletti, where they were subjected to torture, hidden, and held". Afterwards, the children "were transported to […] Uruguay […] [and] [later […] to […] Chile […] where they were abandoned in O'Higgins Plaza, where they were found by the authorities […] and remained in a center for minors until […] they were adopted by the Larrabeiti-Y[á]ñez couple." Based on the foregoing, the defendants were convicted of a number of crimes committed to the detriment of Anatole and Victoria[122] (*infra* para. 173). As reported by the State, the defense attorney of one of the defendants appealed the judgment, so the decision to resolve the appeal filed is pending.

108. Independent of the above processes, in the framework of cases 1351, 1499, 1604, 1584, 1730, and 1772, Federal Criminal Oral Court No. 6 of the Federal Capital issued its verdict on July 5, 2012, and read out the reasoning for the decision on September 17, 2012. The process was initiated based on the complaint filed in 1996 by members of the "Grandmothers of Plaza de Mayo" Association with the aim of "demonstrating that the appropriation of children had been a practice" of the "repressive methodology." The trial was known as the "Systematic plan for the appropriation of children,"[123] and it progressed very slowly through "long delays."[124] In the framework of the case, "11 […] high-ranking soldiers, responsible for the implementation of the repressive practice" were charged, among others.[125]

109. Regarding the facts committed to the detriment of Anatole and Victoria, the court established that "they were taken from the custody of their parents […] on September 26, 1976," and that "they were legally adopted in […] Chile […], until […] the biological family […] managed to establish the whereabouts of the children, who were then identified and able to learn their true identities." The judgment added that Anatole and Victoria "were taken […] [to] 'Automotores Orletti' where they were held illegally until […] they were transferred to […] Uruguay. […] They were finally transferred to […] Chile". This led to the conviction of a person who had been a member of the first Military Junta that ruled during the period of the dictatorship[126] (*infra* para. 174). Because this individual had died July 8, 2013, the Oral Court "ordered the termination of criminal liability."[127]

D.1.1. The investigation into the whereabouts of Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite

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122 *Cf.* Judgment issued by Federal Oral Criminal Court No. 1 on March 3, 2021, case No. 3002 (evidence file, volume X, annexes on supervening facts, folios 16470, and 16871 to 16879), and official letter of July 15, 2020 issued by the Prosecutor of the Office of the Prosecutor for Crimes against Humanity of the Office of the Prosecutor of the Nation (evidence file, volume IV, annex 17 to the answering brief, folio 12345).

123 During the process, 34 cases of "abduction, retention, and concealment of children under the age of 10" were examined, including the cases of Anatole and Victoria. *Cf.* Judgment issued by Federal Oral Criminal Court No. 6 on September 17, 2012, cases No. 1351, 1499, 1604, 1584, 1730, and 1772 (evidence file, volume IV, annex 18 to the answering brief, folios 15823 to 15825).

124 Although Laws No. 23,492 and 23,521 excluded from their regulation the crimes of "abduction and concealment of minors" and "replacement of their civil status," the respective cases advanced "with long delays" due to the connection of the facts with those "protected " by the aforementioned regulations. *Cf.* Written expert opinion rendered by Pablo Parenti (evidence file, volume XI, written expert opinions, folios 16902, 16906, 16907, and 16994).

125 *Cf.* Judgment issued by Federal Oral Criminal Court No. 6 on September 17, 2012, cases No. 1351, 1499, 1604, 1584, 1730, and 1772 (evidence file, volume IV, annex 18 to the answering brief, folios 14506 to 15831).

126 *Cf.* Judgment issued by Federal Oral Criminal Court No. 6 on September 17, 2012, cases No. 1351, 1499, 1604, 1584, 1730, and 1772 (evidence file, volume IV, annex 18 to the answering brief, folios 15,425, 15,438, 15,441, and 15,463). The ruling added that Anatole and Victoria "were the first children to be located."

127 *Cf.* Official communication of July 15, 2020 issued by the Prosecutor of the Office of the Prosecutor for Crimes against Humanity of the Office of the Prosecutor of the Nation (evidence file, volume IV, annex 17 to the answering brief, folio 12347), and official communication of July 15, 2020 issued by the Attorney General in charge of the Specialized Unit for cases of appropriation of children during State terrorism of the Office of the Public Prosecutor of the Nation (evidence file, volume IV, annex 19 to the answering brief, folio 15,837).

110. In the framework of case 2637/04 (*supra* paras. 99 and 100), the investigation into the whereabouts of Julien Cáceres was launched. In this regard, on June 29, 2012, in response to a court order,[128] the authorities of the Municipal Cemetery of the General San Martín District, Province of Buenos Aires, reported that on September 27, 1976 "a coffin entered [...] containing the remains of […] UID," approximately 30 years old, the only one who died on September 26, 1976, whose body was buried in section 14 of that cemetery. They added that in 1986, "the transfer to the [g]eneral ossuary" of "UID's remains" was authorized by a court, therefore "no one named UID [was currently] interred in section 14."[129] Additionally, death certificate "1169, tº II A" was added to the case file. It indicated that on September 26, 1976 at "19[:]30" hours, at "Miter and 1° de mayo, San Martín," "UID died of traumatic heart attack. Acute hemorrhaging. Gunshot wounds […] male, approximately 30 years old."[130] The investigation found that the "cadaver logbook" of the Argentine Federal Police, in which the "Dactyloscopy Division" kept "the fingerprint files of corpses connected to procedures," included file 2810, dated "28-9[-]1976," recording the death of "UID" It reads as follows: "Cause of death [...] shot by military authorities."[131]

111. According to the judge in the case, the "search process and cross-referencing of public documentation [...] led to the determination that Mario Roger [Julien Cáceres] was buried secretly in the Municipal Cemetery of San Martín," adding that the "lack of identification of the remains" was a result of what was duly communicated by the authorities of the Municipal Cemetery: that "the graves […] were dug up, arranging transfer of the remains to [the] [general] ossuary, which is why individual identification is not possible."[132] This judicial authority did not report on the specific steps taken to determine the whereabouts of Victoria Lucía Grisonas Andrijauskaite.

D.2. Lawsuit for damages filed against the State for the acts committed to the detriment of the Julien Grisonas family, case No. 14,846/96

112. On May 22, 1996, Anatole Alejandro and Claudia Victoria Larrabeiti Yáñez, represented by attorney Eduardo Marques Iraola,[133] filed a lawsuit against the National State in contentious-administrative court "seeking compensation for the harm they suffered from their kidnapping and the kidnapping and disappearance of their parents."[134] The case was given number 14,846/96[135].

113. On October 15, 2002, the National Federal Administrative Disputes Trial Court No. 4

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128 *Cf.* Official communication sent to the Director of the Municipal Cemetery of the General San Martín District, Province of Buenos Aires, received on June 28, 2012 (evidence file, volume I, annex 15 to the Report on the Merits, folio 1520).

129 *Cf.* Official communication issued by the Director, the Deputy Director and the Head of the Division of the Municipal Cemetery of the District of General San Martin, Province of Buenos Aires, on June 29, 2012 (evidence file, volume I, annex 16 to the Report on the Merits, folio 1522).

130 *Cf.* Death certificate identified as Record No. 1169, volume II A (evidence file, volume I, annex 18 to the Report on the Merits, folio 1526), and official letter of July 17, 2020 issued by the National Criminal and Correctional Court Federal No. 3 (evidence file, volume IV, annex 14 to the answering brief, folio 11007).

131 *Cf.* "Cadaver log," entry 2810 (evidence file, volume I, annex 17 to the Report on the Merits, folio 1524), and official communication of July 17, 2020 issued by National Federal Criminal and Correctional Court No. 3 (evidence file, volume IV, annex 14 to the answering brief, folio 11010). According to the judge in the case, the document is "in the custody" of the National Criminal and Correctional Chamber.

132 *Cf.* Order of July 17, 2020 issued by the National Federal Criminal and Correctional Court No. 3 (evidence file, volume IV, annex 14 to the answering brief, folios 11004, 11006, 11012, and 11013).

133 *Cf.* Lawsuit pleading included in case file 14,846/96 (evidence file, volume XV, evidence to facilitate adjudication of the case, folios 17,834 to 17,878).

134 *Cf.* Judgment issued by the National Federal Administrative Disputes Trial Court No. 4 on October 15, 2002, found in CUDAP case file: EXP-SO4:0055600/2016, Ministry of Justice and Human Rights (evidence file, volume IV, annex 6 to the answering brief, folio 2914).

135 Case of "Larrabeiti Yáñez, Anatole Alejandro et a. v. National State regarding hearing process".

issued a judgment in which it granted the claim and ordered the State to pay "each of the plaintiffs […] as many pesos as [were] necessary to acquire three hundred thousand United States dollars."[136] In response to appeals filed by the complainants and the State, on November 4, 2004, Court II of the National Chamber of Appeals in Contentious-Administrative Matters issued a judgment whereby it revoked the lower court decision regarding Anatole Alejandro Larrabeiti Yáñez, declaring the suit "time-barred." It also upheld the decision regarding the suit of Claudia Victoria Larrabeiti Yáñez, changing "the compensation awarded" to "ARS 250,000 [two hundred fifty thousand Argentine pesos]."[137]

114. The complainants and the State appealed before the Supreme Court of Justice of the Nation. In a judgment dated October 30, 2007, the court granted the State's petition and "declar[ed] that the suit [by the alleged victims] claiming non-contractual civil liability had lapsed under the statute of limitations." Consequently, it "reject[ed] the suit."[138]

D.3. Reparations sought before administrative forums

115. In 1995, Anatole Alejandro and Claudia Victoria Larrabeiti Yáñez requested the benefits provided under Law 24,411 (*supra* para. 81) for the forced disappearance of their biological parents. The processing of the respective administrative case files then began, with reference to a judgment dated June 2, 1997, whereby the Civil and Commercial Matters Trial Court 10 of the Province of Buenos Aires, based on Law 24,321,[139] declared Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite "missing as a result of forced disappearance."[140]

116. Additionally, administrative files were processed following request for benefits under Law 25,914 (*supra* para. 82) for Anatole and Victoria.[141]

117. The parties claim that no decisions have yet been issued from the different administrative cases granting or denying the benefits requested.

VII
MERITS

118. This case concerns the scope of the Argentine State's international responsibility for the alleged forced disappearance of Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite, as well as the failure to adequately investigate, punish, and provide reparations for acts of torture, forced disappearance, and other human rights violations committed to the detriment of their children, Anatole and Victoria. To carry out its analysis of the merits, the Court will proceed in the following order: (a) rights to recognition of juridical

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136 *Cf.* Judgment issued by the National Federal Administrative Disputes Trial Court No. 4 on October 15, 2002, found in CUDAP case file: EXP-SO4:0055600/2016, Ministry of Justice and Human Rights (evidence file, volume IV, annex 6 to the answering brief, folio 2928).

137 *Cf.* Judgment issued by Court II of the National Chamber of Appeals in Federal Administrative Litigation on November 4, 2004, which is recorded in CUDAP file: EXP-SO4:0055600/2016, Ministry of Justice and Human Rights (evidence file, volume IV, annex 6 to the answering brief, folios 2945 to 2947).

138 *Cf.* Judgment issued by the Supreme Court of Justice of the Nation on October 30, 2007, found in CUDAP case file: EXP-SO4:0055600/2016, Ministry of Justice and Human Rights (evidence file, volume IV, annex 6 to the answering brief, folio 2955).

139 Law 24,321, enacted on June 8, 1994, establishes the following in its article 1: "Any person who as of December 10, 1983, had disappeared involuntarily from the place of their domicile or residence, without any news of his or her whereabouts shall be declared missing as a result of forced disappearance." Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/719/norma.htm.

140 *Cf.* CUDAP case file: EXP-SO4:0033011/2012, Ministry of Justice and Human Rights (evidence file, volume IV, annex 7 to the answering brief, folios 3415 to 3633), and CUDAP case file: EXP-SO4:0030246/2012, Ministry of Justice and Human Rights (evidence file, volume IV, annex 10 to the answering brief, folios 9204 to 9445).

141 *Cf.* CUDAP case file: EXP-SO4:0055600/2016, Ministry of Justice and Human Rights (evidence file, volume IV, annex 6 to the answering brief, folios 2874 to 3414), and CUDAP case file: EXP-SO4:0066255/2015, Ministry of Justice and Human Rights (evidence file, volume IV, annex 9 to the answering brief, folios 8855 to 9202).

personality, personal liberty, humane treatment, and life, read in conjunction with the obligations to respect and guarantee rights; (b) rights to judicial guarantees and judicial protection, read in conjunction with the obligation to respect and guarantee rights, adopt domestic legal effects, and investigate serious human rights violations; (c) rights to judicial guarantees and judicial protection as regards reparations for grave human rights violations, read in conjunction with the obligations to respect and guarantee rights, adopt domestic legal effects, and investigate serious human rights violations; and (d) right to humane treatment of Anatole Alejandro and Claudia Victoria Larrabeiti Yáñez, read in conjunction with the obligations to respect and guarantee rights.

119. Before carrying out its substantive analysis, the Court would note its awareness that the general context and the unique circumstances in which the facts took place, within the framework of "Operation Condor," involved the actions of not only Argentina, but other States, including Uruguay—whose agents intervened directly—and Chile, to whose territory Anatole and Victoria were secretly taken. The three States had an obligation to protect and guarantee human rights and, therefore, the multiple violations committed could eventually lead to some type of concurrent responsibility among them. However, the Court recalls that the case was brought before it only with respect to the Argentine State.

120. Nonetheless, as the Court has highlighted on previous occasions, the concept of "collective guarantee" underlies the entire inter-American system,[142] and is understood as the "general duty of protection that the States have" to ensure the effectiveness of international human rights instruments. Thus, the Court has emphasized that "human rights norms […] reflect common values and collective interests that are considered important and, therefore, worthy enough to benefit from collective application,"[143] and therefore "the duty of cooperation among States in the promotion and observance of human rights is a rule of an *erga omnes* nature, since it must be observed by all States, and is of a binding nature in international law."[144]

121. In this regard, the effectiveness of the collective guarantee mechanism makes it imperative that the States that had some type of participation in the consummation of the facts in this case and, in general, in the context of Operation Condor collaborate with each other, in good faith, to eradicate impunity for the human rights violations committed, providing information that will make it possible to establish the facts and, where relevant, cooperate with the extradition and the investigation, prosecution, and eventual punishment of those responsible for those facts.[145] All this requires a specific duty of inter-State cooperation and collaboration,[146] such that States attend to and apply all available national and international mechanisms and, if necessary, create and implement other essential mechanisms in order to effectively comply with their international obligations[147] (*infra* para. 289).

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142 *Cf. Case of Ivcher Bronstein v. Peru. Competence*. Judgment of September 24, 1999. Series C No. 54, par. 42, and *Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the consequences for State human rights obligations (interpretation and scope of articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States).* Advisory Opinion OC-26/20, November 9, 2020. Series A No. 26, par. 163.

143 *Cf.* Advisory Opinion OC-26/20, November 9, 2020, *supra*, par. 164.

144 *Cf. The institution of asylum, and its recognition as a human right under the Inter-American System of Protection (interpretation and scope of Articles 5, 22(7) and 22(8) in relation to Article 1(1) of the American Convention on Human Rights).* Advisory Opinion OC-25/18 of May 30, 2018. Series A No. 25, par. 199, and Advisory Opinion OC-26/20, November 9, 2020, *supra*, par. 164.

145 *Cf. Case of Goiburú et al. v. Paraguay, supra* par. 166, and *Case of La Cantuta v. Peru. Merits, Reparations, and Costs.* Judgment of November 29, 2006. Series C No. 162, par. 160.

146 *Cf. Case of La Cantuta v.* Peru, *supra*, par. 160, and *Case of Herzog et al. v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of March 15, 2018. Series C No. 353, par. 296.

147 In specific matters of enforced disappearances, the United Nations Committee on Enforced Disappearances has indicated that "When there are indications that a disappeared person may be in a foreign country, […] the authorities responsible for the search should use all available national and international cooperation mechanisms and,

VII.1
RIGHTS TO RECOGNITION OF JURIDICAL PERSONALITY, TO PERSONAL LIBERTY, TO HUMANE TREATMENT, AND TO LIFE, READ IN CONJUNCTION WITH THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS[148]

A. Arguments of the Commission and of the parties

122. The ***Commission*** indicated that "This is an emblematic case of grave human rights violations" due to coordinated actions of repression by Argentina and Uruguay, the practice of forced disappearance, and the systematic plan to appropriate children. It argued that there is no dispute as to the existence of the three elements of forced disappearance of which Victoria Lucía Grisonas Andrijauskaite was a victim, as she was illegally deprived of her liberty by heavily armed military and police agents and later taken to Automotores Orletti, where she was tortured and finally disappeared. Despite the efforts of her relatives to locate her, the authorities did not acknowledge that she had been detained or disclose her whereabouts, "which to this day remain unknown."

123. Regarding Mario Roger Julien Cáceres, it indicated that, although the investigations carried out have led the State authorities to conclude that he died in that operation, "to date there has been no full clarification of what happened, including the whereabouts of his remains." It argued that the three elements constitutive of forced disappearance are present, and that the incident is especially egregious because at the time of his disappearance, the alleged victim had refugee status.

124. The ***representative*** indicated that this case involves extremely important elements, including "transnational persecution and crimes" carried out in the context of the "Condor Plan," which entailed the commission of "very serious crimes against humanity" against the Julien Grisonas family perpetrated by agents of the dictatorship that seized power in 1976 and established a regime of "State terrorism" in Argentina.

125. The ***State*** argued that domestic courts have found that the operation of September 26, 1976 "took place in the context of a widespread and systematic attack against the civilian population." It noted that with the advent of democracy, Argentina had conducted a process of memory, truth, and justice to provide reparations for the consequences of those crimes, as well as to investigate, prosecute, and punish the perpetrators. It added that in a public act held on March 24, 2004, then-President Néstor Kirchner "asked for forgiveness on behalf of the State […] for so many atrocities." Consequently, "it is the understanding of the Argentine State that it has recognized its international responsibility for the crimes committed […] between 1976 and 1983, including those that harmed the Julien Grisonas family."

126. It argued that "what is apparently under discussion […] is […] the effectiveness of the memory, truth, justice, and reparation process implemented," making it necessary for "this Court to recognize and support" that process. It asked that this entire context be taken into account in the comprehensive analysis of the case.

B. Considerations of the Court

127. In its case law, the Inter-American Court has upheld the international consensus of

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when necessary, establish such mechanisms." *Cf*. Committee on Enforced Disappearances, Guiding principles for the search for disappeared persons, UN Doc. CED/C/7, May 8, 2019, Principle 12.

148 Articles 3, 7, 5, and 4 of the American Convention, in conjunction with Article 1(1) of the same instrument and with Article I, paragraph a), of the ICFDP.

forced disappearance[149] as a serious human rights violation. Its prohibition has therefore attained the status of *ius cogens*[150] defined by the following components: (a) deprivation of liberty; (b) direct involvement by government officials or their acquiescence, and (c) refusal to acknowledge the detention and to disclose the fate and whereabouts of the person concerned.[151]

128. The Court has reiterated the continuous nature of the acts constituting forced disappearance until the whereabouts of the victim is known or their remains found, and the multiple offense nature of its consequences as regards the rights recognized in the American Convention, for which the States have the corresponding duty to investigate such acts and, eventually, punish those responsible,[152] in accordance with the obligations derived from the Convention and, in particular, from the ICFDP.[153] The characterization of forced disappearance as a continuing human rights violation entailing multiple offenses[154] is consistent with the criteria of the European Court of Human Rights,[155] as well as with the decisions of international bodies[156] and high courts of the American States, including the Supreme Court of Justice of the Nation of Argentina (hereinafter also "the Supreme Court").[157]

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149 *Cf. Inter alia, Case of Velásquez Rodríguez v. Honduras.* Merits, *supra*, par. 158, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 62.

150 *Cf. Case of Goiburú et al. v. Paraguay, supra* par. 84; *Case of Tenorio Roca et al. v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of June 22, 2016. Series C No. 314, par. 140, and Advisory Opinion OC-26/20, November 9, 2020, *supra*, par. 106.

151 *Cf. Case of Gómez Palomino v. Peru. Merits, Reparations, and Costs.* Judgment of November 22, 2005. Series C No. 136, par. 97, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 62.

152 *Cf. Inter alia*, *Case of Velásquez Rodríguez v. Honduras.* Merits, *supra*, pars. 155 to 157, and *Case of Garzón Guzmán et al. v. Ecuador*, *supra*, pars. 62 and 66.

153 Article I of the ICFDP:

> The States Parties to this Convention undertake: a) Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees; (b) To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories; (c) To cooperate with one another in helping to prevent, punish, and eliminate the forced disappearance of persons; d) To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.

154 This characterization derives not only from the definition found in Article III of the ICFDP, but also from a range of international instruments. See, Declaration on the Protection of all Persons from Enforced Disappearance, approved by the General Assembly of the United Nations through Resolution 47/133 of December 18, 1992, Articles 1, 4 and 17; and the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the United Nations General Assembly on December 20, 2006, Articles 2 and 8.

155 *Cf.* ECHR, *Case of Kurt v. Turkey*, no. 15/1997/799/1002. Judgment of May 25, 1998, par. 124; *Case of Cyprus v. Turkey* [GS], No. 25781/94. Judgment of May 10, 2001, pars. 132 to 134 and 147; *Case of Varnava et al. v. Turkey* [GS], No. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90, and 16073/90. Judgment of September 18, 2009, pars. 111 to 113, 117, 118, 133, 138, and 145; *Case of El-Masri v.* "The Former Yugoslav Republic of Macedonia" [GS], No. 39630/09. Judgment of December 13, 2012, pars. 240 and 241, and *Case of Aslakhanova et al. v. Russia*, No. 2944/06, 8300/07, 50184/07, 332/08, and 42509/10. Judgment of December 18, 2012, par. 122, 131, and 132.

156 *Cf.* Commission on Human Rights, Report of the Working Group on Enforced or Involuntary Disappearances, General Comment on Article 4 of the Declaration on the Protection of all Persons from Enforced Disappearance, January 15, 1996, UN Doc. E/CN. 4/1996/38, par. 55; Commission on Human Rights, Report submitted by Mr. Manfred Nowak, independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances, pursuant to paragraph 11 of Commission resolution 2001/46, January 8, 2002, UN Doc. E/CN.4/2002/71, pars. 84 and 89; Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, General comment on forced disappearance as a continuing offense, January 26, 2011, UN Doc. A/HRC/16/48, par. 39, and Human Rights Committee, *inter alia*, *Gyan Devi Bolakhe v. Nepal*, UN Doc. CCPR/C/123/D/2658/2015, Communication No. 2658/2015, September 4, 2018, pars. 7.7, 7.8, 7.15, and 7.18; *Tikanath and Ramhari Kandel v. Nepal*, UN Doc. CCPR/C/123/D/2658/2015, Communication No. 2560/2015, August 16, 2019, pars. 7.7, 7.8 and 7.13; *Midiam Iricelda Valdez Cantú and María Hortencia Rivas Rodrígez v. Mexico*, UN Doc. CCPR/C/127/D/2766/2, Communication No. 2766/2016, December 23, 2019, pars. 12.5, 12.7, 12.8, and 12.10, and *Malika and Merouane Bendjael v. Algeria*, UN Doc. CCPR/C/128/D/2893/2016, Communication No. 2893/2016, November 3, 2020, pars. 8.4 to 8.6 and 8.12.

157 *Cf. Inter alia*, Supreme Court of Justice of the Nation of the Argentine Republic, Judgment of August 31, 1999, case "*Tarnopolsky, Daniel v. National State and others regarding hearing process*," and Judgment of May 3, 2017,

129. Along these same lines, the need for a comprehensive treatment of forced disappearance has also led this Court to analyze it as a complex, joint violation of several rights recognized in the American Convention through a compound set of behaviors that, exercised toward a single purpose, violate continuously, for as long as they persist, the legal rights protected by the Convention—in particular, the rights to recognition of juridical personality, life, personal integrity, and personal liberty, enshrined in Articles 3, 4, 5, and , respectively.[158]

B.1. Forced disappearances of Victoria Lucía Grisonas Andrijauskaite and Mario Roger Julien Cáceres

130. In accordance with the determination of facts made in this Judgment, the Court recalls that the operation carried out on September 26, 1976, at the home of the Julien Grisonas family, in which members of the Argentine police and military forces participated,[159] took place during a period in which the forced disappearance of persons was a systematic practice undertaken in the context of "State terrorism"[160] (*supra* paras. 59 to 68 and 88 to 91). As Argentina explicitly indicated, these facts are not in dispute.

131. Thus, toward preservation of historical memory and the pressing need to prevent recurrence of such facts,[161] the Court highlights the context of systematic human rights violation that characterized the 1976-1983 period in Argentina, during which the "fight against subversion" took the form of both an internal policy of repression of the civilian population, and coordination with the dictatorial governments of other states, exercised within the framework of "Operation Condor," whose objective was the persecution and elimination of political opponents to the dictatorial regimes that ruled the Southern Cone at the time.[162] To this end, the coordination efforts opened effective channels of communication and joint work among the different investigative agencies and the State security forces, to the point of allowing foreign agents to operate in the territory of another State in order to carry out counterinsurgency actions.[163]

132. The Argentine-Uruguayan coordination, deployed in the framework of Operation Condor, ended up—due to the number of victims and the effectiveness of the applied

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case no. 1574/2014/RH1, "*Bignone, Reynaldo Benito Antonio et al. on extraordinary appeal*"; Plurinational Constitutional Court of Bolivia, Constitutional Judgment No. 1190/01-R of November 12, 2001; Constitutional Court of the Republic of Colombia, Judgment C-580/02 of July 31, 2002; Supreme Court of Justice of the Nation of Mexico, Thesis: P./J. 87/2004, Forced disappearance of persons. The term for prescription begins from the moment the victim is located or their fate has been established; Constitutional Court of the Republic of Peru, Judgment of March 18, 2004, Exp. No. 2488-2002-HC/TC, and Constitutional Court of the Republic of Guatemala, Judgment of July 7, 2009, case file 929-2008.

158 *Cf. Inter alia, Case of Velásquez Rodríguez v. Honduras.* Merits, *supra*, pars. 150, 155 a 158, 186, and 187; *Case of Godínez Cruz v. Honduras. Merits.* Judgment of January 20, 1989. Series C No. 5, pars. 158, 163 to 167, 196, and 197; *Case of Anzualdo Castro v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 22, 2009. Series C No. 202. pars. 68 to 103, and *Case of Isaza Uribe et al. Colombia. Merits, Reparations, and Costs.* Judgment of November 20, 2018. Series C No. 363, par. 81.

159 Specifically, agents from the State Information Secretariat, the Department of Foreign Affairs of the Federal Security Superintendence of the Federal Police, and military personnel participated (*supra* par. 88).

160 The United Nations Working Group on Enforced or Involuntary Disappearances was created in 1980 "as an outlet to address and investigate the thousands of complaints against Argentina" filed before the then Commission on Human Rights, resulting from "[t]he massive and systematic way in which [t]he dictatorship […] carried out [this] practice." *Cf*. Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Argentina, January 5, 2009, UN Doc. A/HRC/10/9/Add.1, para. 9.

161 *Cf. Case of Goiburú et al. v. Paraguay, supra*, par. 93.

162 Expert witness Francesca Lessa stated that the coordination making "Operation Condor" possible was used specifically "to silence the voice of opposition political parties and groups operating from exile." *Cf*. Expert report signed by Francesca Lessa (evidence file, volume XII, affidavits, folio 16998).

163 *Cf. Nunca Más. Informe de la Comisión Nacional sobre la Desaparición de Personas, Buenos Aires*, Eudeba, 1984, chapter I.A, "La coordinación represiva en Latinoamérica," and expert opinion signed by Francesca Lessa (evidence file, volume XII, affidavits, folios 16993 and 16994).

methodologies[164]—significantly impacting Uruguayans, who as a consequence of the dictatorship established in Uruguay starting in 1973, were in the territory of Argentina. Under these circumstances, the operation of the Automotores Orletti clandestine detention and torture center was critical. The experiences of the alleged victims must be understood in this context.

133. It must first be noted that the operation of September 26, 1976, was carried out within the framework of the counterinsurgency actions that the intelligence and security services of Argentina and Uruguay conducted jointly against the civilian population. Indeed, the Julien Grisonas couple was a target of coordinated repressive actions, as they were considered "subversive elements" given their status as political opponents.[165]

134. The established facts regarding Ms. Grisonas Andrijauskaite show that she was violently detained by State agents during the operation and was later taken to the Automotores Orletti clandestine detention and torture center. Argentine authorities provided no information as to her fate despite a series of requests and actions taken, especially by her mother-in-law, María Angélica Cáceres de Julien. To this day, the whereabouts of the alleged victim are unknown. The Court finds that the verified facts present all three defining elements of forced disappearance.

135. The domestic courts have issued three convictions finding that Ms. Grisonas Andrijauskaite "was illegally deprived of her liberty" on the day of the operation, "was transferred" to "Automotores Orletti" and, to date, "remains missing." In two of the rulings, it was also established that in the clandestine center, "like the rest of the people detained there," she suffered "beatings and threats, physical torture, […] lost contact with the outside world, […] received [n]o medical care[,] could not properly attend to […] her physiological needs […] [and] was forced to listen to the screams of other people when they were tortured or when they complained of pain from the injuries caused by torture."[166]

136. Thus, the kidnapping of the alleged victim, carried out directly by State agents, and her subsequent clandestine detention in Automotores Orletti[167] constitute the openly illegal nature

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[164] Expert witness Francesca Lessa stated that in the framework of Operation Condor, the persons "most persecuted were those of Uruguayan nationality" and that Argentina was the territory "where the repressive coordination acted most extensively." She added that "Argentina and Uruguay were the countries that most used the repressive coordination structures." A declassified intelligence report from the Department of Defense of the United States of America, dated October 1, 1976, indicates that between September 24 and 27, 1976, the Argentine and Uruguayan intelligence services carried out, joint operations against a Uruguayan "terrorist organization" (OPR-33) operating in Buenos Aires. As a result of such operations, the entire infrastructure of the organization in Argentina was "eliminated" ("During the period 24-27 September 1976, members of the Argentine State Secretariat for Information (SIDE), operating with officers of the Uruguayan Millitary Intelligence Service carried out operations against the Uruguayan Terrorist organization, the OPR-33 in Buenos Aires. As a result of this join operation SIDE officials claimed that the entire OPR-33 infrastructure in Argentina has been eliminated"). *Cf*. Expert report signed by Francesca Lessa (evidence file, volume XII, affidavits, folios 16993 and 17056). See, Statistical tables on victims and acts of State terrorism (evidence file, volume IV, annex 23 to the answering brief, folio 15910).

[165] As established, the alleged victims were members of the *Partido por la Victoria del Pueblo* (*supra* par. 87), formed in 1975 in Buenos Aires by members of Uruguayan organizations in exile (*Organización Popular Revolucionaria 33 Orientales*, known as OPR-33; *Resistencia Obrero Estudiantil*, *Frente Estudiantil Revolucionario*, and *Fuerza Revolucionaria de los Trabajadores*). *Cf*. Judgment issued by Federal Oral Criminal Court No. 1 on May 31, 2011, case No. 1627 (evidence file, volume I, annex 2 to the Report on the Merits, folio 1096). Federal Oral Criminal Court No. 6, in the Judgment of September 17, 2012, cases No. 1351, 1499, 1604, 1584, 1730 and 1772 (evidence file, volume IV, annex 18 to the answering brief, folio 15426) indicated that the alleged victims "were investigated by the former Intelligence Directorate […] and had personal files tagged 'DS,' which meant subversive criminal [*delincuente subversivo*]."

[166] *Cf.* Judgment issued by Federal Oral Criminal Court No. 1 on May 31, 2011, case No. 1627 (evidence file, volume I, annex 2 to the Report on the Merits, folio 1270); judgment issued by Federal Oral Criminal Court No. 1 on August 9, 2016, case No. 1504, 1951, 2054, and 1976 (evidence file, volume IV, annex 8 to the answering brief, folios 7579 and 7580).

[167] In January 1981, when referring to the clandestine detention centers, the Working Group on Forced or Involuntary Disappearances specifically mentioned Automotores Orletti, indicating that it was "located in Buenos Aires

of the deprivation of liberty, in violation of Article 7(1) of the American Convention, which should be understood only as the beginning of the configuration of the complex violation of rights amounting to forced disappearance.[168]

137. The alleged victim's stay in the clandestine center violated her right to personal integrity in view of the acts of torture she suffered and the other conditions to which she was subjected that impacted her personal dignity. At the same time, prolonged isolation and coercive solitary confinement in themselves amount to cruel and inhuman treatment that violates Article 5(1) and (2) of the American Convention.[169] Likewise, Ms. Grisonas Andrijauskaite was in the custody of the government's repressive bodies that acted with impunity to torture, murder, and cause forced disappearance of persons, which represents, in itself, a violation of the duty to prevent violations of the rights to integrity and life, recognized in Articles 5 and 4 of the Convention, even if the fact of depriving a person of life cannot be proven in this specific case.[170]

138. For its part, the authorities' refusal to recognize the deprivation of liberty or the whereabouts of the person, together with the other elements of the disappearance, amounted to removal of the protection of the rule of law or a violation of legal certainty, directly preventing recognition of juridical personality.[171] The disappearance of Ms. Grisonas Andrijauskaite therefore placed her in a situation of legal indeterminacy, which prevented her from being the bearer of or effectively exercising her rights in general, amounting to a violation of her right to recognition of juridical personality enshrined in Article 3 of the American Convention.[172]

139. Based on this account, it is an undisputed fact that to date, uncertainty persists as to the fate or whereabouts of Ms. Grisonas Andrijauskaite, so that her forced disappearance continues, making its nature permanent and meaning the State is internationally responsible.

140. Regarding Mario Roger Julien Cáceres, the established facts show that he was detained during the operation of September 26, 1976, and was arbitrarily deprived of his life as a result of the intervention of State agents. Afterwards the State refused to provide any information about his fate or the location of his remains. Indeed, the national courts have concluded that on the day of the operation, after Julien Cáceres' failed attempt to escape, he was "gunned down" by the agents. One of the witnesses to the incident stated that after the alleged victim was detained, "[his] body fell onto the street" and was then picked up and placed in a vehicle by the personnel who participated in the operation (*supra* para. 91). Regarding the whereabouts of his remains, without entering into any analysis of the relevance of arguments about specific violations, the Court confirms that, to date, no unequivocal information is available to identify them.

141. In view of this, the Court finds that the circumstances described indicate that the actions taken in this case must also be classified as forced disappearance. Indeed, according to the

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and [was] run by members of the Argentine and Uruguayan security forces." *Cf.* Commission on Human Rights, Report of the Working Group on Enforced or Involuntary Disappearances, January 22, 1981, UN Doc. E/CN.4/1435, par. 58.d. See, *Case of Gelman v. Uruguay*, *supra*, par. 53.

168 *Cf. Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of August 12, 2008. Series C No. 186, par. 112, and Case of *Alvarado Espinoza et al. v. Mexico. Merits, Reparations, and Costs.* Judgment of November 28, 2018. Series C No. 370, par. 172.

169 *Cf. Case of Velásquez Rodríguez v. Honduras.* Merits, supra, pars. 156 and 187, and Case of *Omeara Carrascal et al. v. Colombia.* Merits, Reparations, and costs. Judgment of November 21, 2018. Series C No. 368, par. 194.

170 *Cf. Case of Velásquez Rodríguez v. Honduras.* Merits, *supra*, par. 175, and *Case of Omeara Carrascal et al. v. Colombia*, *supra,* par. 194.

171 *Cf. Case of Anzulado Castro v. Peru*, *supra*, pars. 90 and 92; and *Case of Terrones Silva et al. v.* Peru, *supra*, par. 172.

172 *Cf. Case of Anzulado Castro v.* Peru, *supra*, par. 101, and *Case of Vasquez Durand et al. v.* Ecuador, *supra*, par. 139.

definition contained in Article II of the ICFDP[173] and the case law of this Court, one of the characteristics of forced disappearance—as opposed to extrajudicial execution—is that the State refuses to recognize that the victim is in its custody or provide information in this regard, thereby creating uncertainty as to their whereabouts and whether they are alive or dead, causing intimidation and suppressing of rights.[174] Therefore, the Court finds that the elements of forced disappearance have been established.

142. Similarly, this Court has heard a number of cases in which the presence of greater or lesser evidence of the victims' death did not change the classification of forced disappearance, because the classification is based on what the State agents did after killing the victims—that is, taking measures to conceal what had really happened or erasing all trace of the bodies to prevent them from being identified or their fate and whereabouts from being established.[175] The United Nations Working Group on Enforced or Involuntary Disappearances agrees uses the same criteria (hereinafter, the "Working Group on Enforced Disappearances").[176]

143. Therefore, the Court concludes that in the case of Julien Cáceres, acts constituting forced disappearance were also carried out, and their harmful effects on the rights enshrined in Articles 7(1), 5(1), 5(2), 4(1), and 3 of the American Convention continue today, making the State internationally responsible.

144. It is likewise worth recalling that Julien Cáceres had refugee status. The Court highlights the special condition of vulnerability of asylees or refugees, which imposes specific obligations—in terms of protection—on the State in whose territory they are located.[177]

145. According to this account, the Argentine State was required to guarantee the rights of those who had come to its territory fleeing political persecution, which is reinforced by the principle of non-refoulement, established as a cornerstone of the international protection of refugees or asylees and asylum seekers,[178] which extends to preventing the extradition,

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[173] Article III of the ICFDP establishes that "forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees."

[174] *Cf. Case of Anzulado Castro v.* Peru, *supra*, par. 91, and Case of *Alvarado Espinoza et al. v. Mexico*, *supra*, par. 200.

[175] *Cf. Inter alia*, Case of *Castillo Páez v. Peru. Merits.* Judgment of November 3, 1997. Series C No. 34, pars. 30(a) and (e), and 71; Case of *Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, pars. 170, 173, and 200; Case of *19 Merchants v. Colombia. Merits, Reparations, and Costs.* Judgment of July 5, 2004. Series C No. 109, pars. 138 and 155; Case of *Gómez Palomino v. Peru*, *supra*, pars. 54(14) and 54(15); Case of *La Cantuta v. Peru*, *supra*, pars. 114 and 162, *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra*, pars. 80, 81, 84 to 88, 92, and 94; *Case of Rodríguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 14, 2014. Series C No. 287, pars. 367 to 369, and *Case of the Peasant Community of Santa Bárbara v. Peru. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of September 1, 2015. Series C No. 299, pars. 167 and 184 to 186.

[176] Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, General comment on the definition of enforced disappearance, January 10, 2008, UN Doc. A/HRC/7/2, par. 10:

> [A] detention followed by an extrajudicial execution [...] is an enforced disappearance proper, as long as such detention or deprivation of liberty was carried out by governmental agents of whatever branch or level, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, and, subsequent to the detention, or even after the execution was carried out, State officials refuse to disclose the fate or whereabouts of the persons concerned or refuse to acknowledge the act having been perpetrated at all.

[177] CONADEP described the inter-State coordination at the time as "a typically 'multinational' repressive apparatus," within the framework of which "activities of persecution were carried out [...] not limited by geographical borders, [...] in clear violation of international treaties and conventions [...] on the right to asylum and political refuge." *Cf. Nunca Más. Informe de la Comisión Nacional sobre la Desaparición de Personas*, Buenos Aires, Eudeba, 1984, Chapter K., "La coordinación represiva en Latinoamérica."

[178] *Cf. Case of the Pacheco Tineo Family v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 25, 2013. Series C No. 272, par. 151, and Advisory Opinion OC-25/18, *supra*, par. 179.

deportation, expulsion, return, or removal of those persons in any way if there is sufficient evidence of a risk of irreparable damage to their rights, even more so in the event of good reason to believe that they would be at risk of being subjected to torture or cruel, inhuman, or degrading treatment, or of being arbitrarily deprived of their lives.[179] However, all this openly ignored and violated in the context of the facts of the case.[180]

146. Lastly, the Court reiterates that the context of what happened in this case was particularly serious, in that the State was the main factor in the crimes committed, amounting to serious human rights violations as part of a systematic and inter-State practice[181] of "state terrorism," leading what happened to be classified by the Argentine courts as crimes against humanity (*supra* paras. 59 and 60).

B.2. Conclusion

147. Based on all these considerations, the Court concludes that the Argentine State is responsible for the forced disappearance of Victoria Lucía Grisonas Andrijauskaite and Mario Roger Julien Cáceres, in violation of the rights to recognition of juridical personality, to life, to personal integrity, and to personal liberty enshrined, respectively, in Articles 3, 4(1), 5(1), 5(2), and 7(1) of the American Convention, read in conjunction with the provisions of Article 1(1), as well as Article I, paragraph (a), of the ICFDP, which prohibits state practice of the forced disappearance of persons.

VII.2
RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION, IN CONJUNCTION WITH THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS, ADOPT PROVISIONS OF DOMESTIC LAW, AND INVESTIGATE SERIOUS HUMAN RIGHTS VIOLATIONS[182]

148. The Court will proceed to study the various and distinct issues raised in relation to the allegations of violations of the rights to judicial guarantees and judicial protection, and the duty to investigate serious human rights violations.

A. Arguments of the parties and of the Commission

A.1. Regarding the alleged situation of impunity produced while Laws No. 23,492 and 23,521 were in force

149. The ***Commission*** argued that while Laws No. 23,492 and 23,521 were in force, "a situation of total impunity regarding the crimes against humanity perpetrated against the

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179 *Cf. Rights and guarantees of children in the context of migration and/or in need of international protection, par.* Advisory Opinion OC-21/14 dated August 19, 2014. Series A No. 21, par. 226, and *Case of Wong Ho Wing v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of June 30, 2015. Series C No. 297, pars. 127 and 130.

180 The Working Group on Enforced or Involuntary Disappearances has addressed the issue, stating that "[w]hen it is a question of […] a refugee who suffers from forced disappearance […], rights specifically recognized in international human rights instruments are also violated." *Cf*. Report of the Working Group on Enforced or Involuntary Disappearances, December 9, 1983, UN Doc. E/CN.4/1984/21, par. 154. Likewise, that body has indicated that, in the area of forced disappearances, "there are specific obligations" for the States, "derive[d] from the specific characteristics of the migratory phenomenon in the spheres of prevention, search, criminalization/investigation, reparation and international cooperation." *Cf*. Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration, July 28, 2017, UN Doc. A/HRC/36/39/Add.2, par. 57.

181 *Cf. Case of Goiburú et al. v. Paraguay, supra,* pars. 66 and 72, and *Case of Gelman v. Uruguay*, *supra*, par. 99.

182 Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 of the same instrument, and Articles I, paragraph (b), and III of the Inter-American Convention on Forced Disappearance of Persons.

Julien Grisonas family," which are not eligible to benefit from amnesty. It pointed out that pursuant to inter-American case law, while these laws were in force and being applied, the State was violating Articles 8(1) and 25 of the Convention, read in conjunction with Articles 1(1) and 2 thereof, as well as Article I, paragraph (b), of the ICFDP.

150. The ***representative*** noted that these laws constituted a "legal wall of impunity that block[ed] accusations and criminal actions." Such impediments "forced those who wanted to know the [truth] to undertake extensive civil actions with an obvious and substantial reduction in investigative powers and an evidentiary framework that was more restrictive."

151. The ***State*** argued that the laws were declared "permanently null and void" by the National Congress in 2003 and "without effect" by the Supreme Court of Justice of the Nation in 2005, thereby "invalidating the impunity laws and decrees and all their effects." It added that in the cases brought with regard to the facts committed to the detriment of the Julien Grisonas family, "energetic enforcement of the Convention" was applied in the form of the rejection of attempts to apply amnesties and pardons.

A.2. Regarding the investigations aimed at clarifying what happened and punishing those responsible and guaranteeing a reasonable time

152. The ***Commission*** noted that in 2017, two former police officers were convicted of the unlawful deprivation of liberty of Ms. Grisonas Andrijauskaite. Although the ruling considered it proven that Julien Cáceres was murdered, the defendants were acquitted of the crime. In the appeals phase, the decision was partially overturned. Because "no ruling has been delivered," the "facts remain in impunity," and consequently, the State is responsible for the violation of Articles 8(1) and 25 of the Convention, read in conjunction with Articles 1(1) and 2, and Article I(b), of the ICFDP. Regarding the acts committed against Anatole and Victoria, it argued that after the case was brought before this Court, four people were convicted, which "constitutes a fundamental step toward obtaining justice for the victims."

153. It added that, notwithstanding the complexity of the process, "45 years after the events […] and 18 years since the legal obstacles were lifted," those responsible for the disappearance of Julien Cáceres have still not been punished, nor have his fate and whereabouts been determined, and the same is true for Ms. Grisonas Andrijauskaite.[183]

154. The ***representative*** indicated that the establishment of responsibilities for "the homicide" of Julien Cáceres is pending, as well as "the handling [...] of what was known as 'spoils of war.'" It indicated that neglect of the duty to investigate constitute violations of the rights to judicial guarantees and judicial protection.

155. The ***State*** argued that although those accused of the murder of Julien Cáceres were acquitted, the decision was overruled. It pointed out that, the end result aside, the investigation made it possible "to reconstruct the circumstances" of what happened. It indicated that the State cannot be found responsible for "failing to charge and prosecute" persons "who are not subject to its jurisdiction," whose extradition was deferred. It argued that there is no "situation of impunity" regarding the facts.

156. It indicated that the cases filed constitute "mega-trials" involving prosecution of serious and systematic human rights violations. It argued that the expert witnesses Méndez and Parenti referred to the strategy of moving cases forward "by sections," which "is in keeping with the prioritization standards […] established under international law," such that "it is hard

[183] In its final written arguments, the Commission asked that the State be declared internationally responsible for the violation of Articles 3, 4(1), 5, 7(1), 8(1), and 25(1) of the American Convention, in relation to its Articles 1(1) and 2 of that instrument, as well as Articles I, paragraphs (a) and (b), and III of the ICFDP.

to understand how a certain fact could be considered […] in impunity" because it is not addressed in "one or two of those sections." It added that "the period during which the investigations have been ongoing" cannot be considered in violation of the rights of the alleged victims "if it can be appreciated that […] the courts have put all their effort into clarifying the facts […] as comprehensively as possible."

A.3. Regarding the "delayed" codification of the criminal offense of forced disappearance of persons in the Argentine legal system

157. The Commission indicated that, although several former State intelligence agents were convicted in 2011 for crimes committed to the detriment of Ms. Grisonas Andrijauskaite, the ruling did not apply the criminal offense of forced disappearance, added to domestic legislation in 2011. It indicated that the ICFDP "entered into force in Argentina on February 28, 1996, giving rise to the obligation to codify the criminal offense of forced disappearance." However, 15 years passed before the international obligation was fulfilled. It concluded that as a result of the "delay" in codifying the criminal offense, Argentina had violated Article III of the ICFDP.

158. The ***representative*** indicated that the State had for more than 15 years failed to comply with its obligation to codify the criminal offense of forced disappearance of persons, amounting to "an autonomous and separate violation."

159. The ***State*** argued that "it would have been difficult to apply" the criminal offense codified in article 142(3) of the Penal Code in the judgment handed down on May 31, 2011, given the date on which the provision entered into force, that is, May 17, 2011. It indicated that the judgment "described […] each and every one of the elements comprising [the] forced disappearance of persons, applying the corresponding criminal offenses." In this regard, the judges classified the conduct as crimes against humanity. It indicated that the sentence had been calculated based on the maximum provided for in article 142(3).

160. It added that the judgment in the "Systematic Plan" case classified the facts impacting Anatole and Victoria as forced disappearance, without prejudice to the application of the criminal offenses in force at the time of their commission. The fact that article 142(3) of the Penal Code was not applied "cannot be considered a violation of international law" since "the legal solution adopted amount[ed] to Convention enforcement that allowed [it] to throw out any challenge based claims of ex post facto application of criminal law."

A.4. On the search for the whereabouts of Victoria Lucía Grisonas Andrijauskaite and Mario Roger Julien Cáceres

161. The ***Commission*** indicated that the State has not used all means available to promptly carry forth the actions and investigations necessary to clarify the fate of the alleged victims. As for Julien Cáceres, there are indications that his remains were transferred to the general ossuary of the Municipal Cemetery of the Partido General de San Martín, which "no matter how serious they are, remain simply indications, such that they do not on their own constitute an unequivocal determination of the fate of the remains. It alleged that the State had referenced the completion of the work of the Argentine Forensic Anthropology Team (hereinafter also "the EAAF") without indicating "whether there were additional steps taken or the reason why the [c]ourt did not respond to the requests made by the representative" in that regard.

162. The ***representative*** indicated that the State had attached a report from the Argentine Forensic Anthropology Team to the answering brief, which "they found surprising because […] it had not been requested by the judge […], but by [the representative of the State], without advising the judge or the Larrabeiti [Yáñez] siblings." The representative indicated that through this "they learned of this important report that […] is mainly of interest to Anatole

and Victoria," who "still do not understand why the State did not invite them to participate in the conversations with the EAAF, or at least inform them of the report."

163. The ***State*** argued that identifying the remains of disappeared persons is an essential part of its memory, truth, and justice policy. It indicated that the investigation led to the "determination that the remains [of Julien Cáceres] were secretly interred in the San Martín Municipal Cemetery." However, the remains were transferred to the cemetery's general ossuary, which, according to the EAAF, "makes identifying them difficult." It added that the failure to clarify the fate of Ms. Grisonas Andrijauskaite must be understood in the context of a "precise technology aimed at guaranteeing impunity." Argentina expressed "its commitment to [its] inalienable duty to continue trying to clarify [their] fate."

B. Considerations of the Court

164. The Court recalls that the obligation to investigate human rights violations is among the positive measures that States must adopt to guarantee the rights recognized in the American Convention.[184] This obligation also stems from other inter-American instruments. Indeed, in cases of forced disappearances, the obligation is reinforced by Article I(b) of the ICFDP.[185] Accordingly, in view of the particular seriousness of the forced disappearance of persons and the nature of the rights violated, the prohibition of its commission and the correlative duty to investigate and punish those responsible have reached the status of *ius cogens*.[186]

165. The Court finds States' compliance with their duty to investigate and punish serious human rights violations—such as the ones in this case—not only constitutes an international obligation, but also lays the groundwork essential for consolidating a comprehensive policy on matters of law in terms of establishing the truth, access to justice, effective measures of reparation, and guarantees of non-repetition. Thus, judicial processes aimed at clarifying what happened in contexts of systematic human rights violations can provide a space for public denunciation and accountability for the illegal acts committed; they build society's trust in the legal system and in the work of its authorities, legitimizing their actions; they allow for social reconciliation processes that are based on knowledge of the truth of what happened and the dignity of the victims; and, ultimately, they strengthen collective cohesion and the rule of law.[187]

166. Based on these considerations, the Court will examine the alleged violations, in the following order: (a) compliance with the duty to investigate and punish the forced disappearance of persons within a reasonable time; (b) the codification of the criminal offense of forced disappearance of persons in the Argentine legal system and the failure to apply it in this specific case, and (c) the search for Victoria Lucía Grisonas Andrijauskaite and Mario Roger Julien Cáceres and the right of their relatives to know the truth.

B.1. Compliance with the duty to investigate and punish the forced disappearance of persons within a reasonable time

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184 *Cf. Case of Velásquez Rodríguez v. Honduras.* Merits, *supra*, par. 166, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 66.

185 *Cf. Case of Rodríguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia*, *supra,* par. 437, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 66.

186 *Cf. Case of Goiburú et al. v. Paraguay, supra* par. 89, and *Case of Rochac Hernández et al. El Salvador. Merits, Reparations, and Costs.* Judgment of October 14, 2014. Series C No. 285, par. 92.

187 The Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-repetition has highlighted that criminal proceedings in transitional processes "give victims recognition as rights holders," "[s]erve [...] for the legal system to demonstrate that it is worthy of trust," "strengthen the rule of law and [...] contribute to social reconciliation". *Cf*. Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, UN Doc. A/HRC/27/56, August 27, 2014, par. 22. See, also, United Nations Security Council, Report of the Secretary General, The rule of law and transitional justice in conflict and post-conflict societies, U.N. Doc. Doc. S/2004/616, August 3, 2004, par. 39.

167. The Court has indicated that every person, including the relatives of the victims of human rights violations, has the right to know the truth.[188] Essentially, the right to access to justice must ensure, within a reasonable time period, the right of the alleged victims or their relatives to know the truth about what happened and investigate it to prosecute and punish those eventually found responsible.[189]

168. The Court notes that in the present case, the Commission and the representative agree regarding the situation of "impunity" for the acts committed to the detriment of Mario Roger Julien Cáceres, as to date, those responsible for his enforced disappearance have not been punished. Likewise, they point out that the processes initiated to investigate and determine responsibilities for the facts that caused harm to the Julien Grisonas family were unjustifiably delayed. Consequently, without prejudice to the specific arguments related to the search for the whereabouts of the Julien Grisonas couple—which will be the subject of later analysis (infra paras. 209 to 221)—no failure to act with due diligence in criminal investigations has been alleged, since the allegations do not refer to flaws in the investigation, but to delay over time, impacting the guarantee of the reasonable period of term.

169. The Court recalls that, regarding the facts that caused harm to the Julien Grisonas family, starting with case No. 2637/04 before National Federal Criminal and Correctional Court No. 3, five "tranches" or parts have been moved to oral proceedings before Oral Federal Criminal Court No. 1 (*supra* paras. 101 to 107).

170. Thus, in case No. 1627 ("Automotores Orletti I"), the Oral Court convicted three people in 2011 for the crimes of "illegitimate deprivation of liberty committed by a public official with abuse of authority or without the formalities required by law, aggravated by the use of violence or threats […] in conjunction […] with the crime of committing torture," all to the detriment of Ms. Grisonas Andrijauskaite. The judges ordered the following sentences: (a) 25 years in prison and "absolute and perpetual disqualification" for a former intelligence agent, convicted as co-perpetrator of acts committed against multiple victims; (b) 25 years in prison for another defendant who did not exercise public functions, convicted as a necessary participant in acts also committed against multiple victims; and (c) life imprisonment and "absolute and perpetual disqualification" for a former soldier convicted as a co-perpetrator for acts committed with respect to multiple victims. The sentence was upheld in 2013.

171. As for case No. 1976, prosecuted jointly with cases No. 1504, 1951, and 2054 ("Operation Cóndor," "Plan Cóndor," or "Automotores Orletti II"), in 2016 a former intelligence agent of the State Information Secretariat was sentenced for the crimes of "illegitimate deprivation of liberty committed by a public official with abuse of authority or without the formalities prescribed by law, aggravated by the use of violence or threats, […] coinciding with the crime of committing torture," to the detriment of Ms. Grisonas Andrijauskaite. The sentence ordered for the convicted person, as a co-perpetrator in connection with acts committed against multiple victims, was 25 years in prison and "absolute and perpetual disqualification to hold public office." The decision was upheld in 2018.

172. Regarding cases 2261 and 2390 ("Automotores Orletti III and IV"), in 2017, the Oral Court convicted two people—former Federal Police agents—of the crime of "illegitimate deprivation of liberty committed by a public official with abuse of authority or without the formalities prescribed by law, aggravated by the use of violence or threats," to the detriment

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188 *Cf. Case of Bámaca Velásquez v. Guatemala.* Merits, *supra*, par. 181; *Case of Carpio Nicolle et al. Guatemala. Merits, Reparations, and Costs.* Judgment of November 22, 2004. Series C No. 117, par. 128, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 86.

189 *Cf. Case of Bulacio v. Argentina. Merits, Reparations, and Costs.* Judgment of September 18, 2003. Series C No. 100, par. 114, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 82.

of Ms. Grisonas Andrijauskaite. Both people were sentenced as co-perpetrators to six years in prison and "[special disqualification] to hold public office for double the time of the prison term." The judgment acquitted the two defendants of the crime of "aggravated homicide by conspiracy" for the death of Julien Cáceres. In 2019, this acquittal was vacated. As of the date of issuance of this Judgment, a ruling is awaited from the Supreme Court of Justice of the Nation on a motion for reconsideration of the dismissal of appeal.

173. In case 3002 ("Automotores Orletti V"), a conviction was handed down in 2021 against four people (previously prosecuted in the framework of cases 1627 and 1976) for the crimes of "abduction, retention, and concealment of a minor under the age of 10 […] concurrent […] with […] illegal deprivation of liberty committed by a public official with abuse of authority or without the formalities prescribed by law, aggravated by the mediation of violence or threats, concurrent […] with the […] imposition of torture," to the detriment of Anatole and Victoria. The judges found the defendants responsible for other acts committed to the detriment of multiple victims and handed down sentences of "[life imprisonment and absolute and perpetual disqualification from public service]," "comprehensive of what was ordered" in the different prior processes.

174. Independently of the previous processes, in cases 1351, 1499, 1604, 1584, 1730, and 1772 ("Systematic plan for the appropriation of children"), in 2012, Federal Oral Criminal Court No. 6 sentenced one of the former members of the first Military Junta that governed during the dictatorship for the crimes of "abduction, retention, and concealment of a minor under ten years of age in conjunction […] with rendering uncertain the civil status of a minor under the age of ten," to the detriment of Anatole and Victoria. The judges imposed on the convict the "[single sentence of life imprisonment and absolute perpetual disqualification from holding public office]" as the perpetrator of different crimes committed against multiple victims.

175. The Court views positively the progress made by the Argentine authorities to identify, prosecute, and punish those responsible for the acts committed against Ms. Grisonas Andrijauskaite and her children, Anatole and Victoria, in the framework of the efforts undertaken to clarify the serious human rights violations perpetrated during the 1976-1983 period. Thus, the handing down in 2021 of a conviction in connection with the facts of which Anatole and Victoria were victims, means the State fulfilled its obligation to investigate and punish the crimes committed against them, and therefore it would be out of order to hold the State responsible for violation of Articles 1, 6, and 8 of the ICPPT.

176. Next, the Court will examine the guarantee of a reasonable time. The Court reiterates that pursuant to Article 8(1) of the American Convention and as part of the right to justice, the processes must be carried out within a reasonable time.[190] Therefore, in view of the need to guarantee the rights of the affected persons, a prolonged delay may constitute, by itself, a violation of judicial guarantees.[191] Evaluation of the reasonable time must be conducted for each specific case with regard to the total length of the process, from the first procedural action until the issuance of the final judgment, including the remedies that may be filed before different instances.[192]

177. The case law has established that four elements must be taken into account in determining whether the guarantee of reasonable time is met, namely: (a) the complexity of

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[190] *Cf. Case of Genie Lacayo v. Nicaragua. Merits, Reparations, and Costs.* Judgment of January 29, 1997. Series C No. 30, par. 77; *Case of Guachala Chimbo et al. v. Ecuador. Merits, Reparations, and Costs.* Judgment of March 26, 2021. Series C No. 423, par. 211, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 82.

[191] *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations, and Costs.* Judgment of June 21, 2002. Series C No. 94, par. 145, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 82.

[192] *Cf. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, par. 71, and *Case of Ríos Avalos et al. v. Paraguay, supra* par. 166.

the matter;[193] (b) the procedural activity of the interested party;[194] (c) the conduct of the judicial authorities;[195] and (d) the adverse effect of the duration of the proceedings on the legal situation of the alleged victim.[196]

178. The Court recalls that the State is responsible for justifying—based on the above criteria—the time taken, and where it fails to do so, the Court has broad authority to conduct its own assessment.[197] In this sense, Argentina justified the delay of the processes based on the complexity involved, and, with respect to the facts to the detriment of Julien Cáceres, on the impossibility of moving the cases forward given that the persons to be charged were not on Argentine territory and Uruguay had declined to turn them over, citing extradition requirements.

179. Regarding the first element—that is, the complexity of the matter—the Court is aware, as has been explained in this Judgment, that the facts on which this case is based were committed in the context of a systematic plan to repress the civilian population and violate human rights. This meant a general dynamic of criminal activity and impunity was orchestrated by the most senior government authorities, to which was added the framework of inter-State coordination under Operation Condor, all of which certainly make it complex to investigate and prosecute what happened, as doing so requires untangling criminal schemes that were planned and supported secretly and unfolded both domestically and internationally, with multiple victims, perpetrators, and facts needing to be clarified.[198] The complexity of the processes is therefore clear. In view of this, the actions taken by the judicial authorities to address the issues arising from this complexity must be determined, without losing sight of the other elements causing delays in the response expected by the victims of the crimes committed.

180. Regarding the second element, referring to the actions of the alleged victims in the specific case, the Court recalls that, in 2012, through his representative, Anatole became a plaintiff in case 2637/04. His intervention there was aimed at requesting that certain procedures be carried out; requesting the expansion of the investigations into certain facts; and pointing that, in his opinion, there were "delays and omissions" in the case's handling (*supra* para. 100). Therefore, the actions of the alleged victims did not contribute to the delay

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193 Regarding the analysis of the complexity of the matter, the Court has taken into account, among other criteria, the complexity of the evidence, the number of defendants or victims, the characteristics of the remedy set forth in the domestic legislation, and the context in which the violation occurred. *Cf. Case of Genie Lacayo v. Nicaragua. Preliminary Objections.* Judgment of January 27, 1995. Series C No. 21, par. 78, and *Case of Bedoya Lima et al. v. Colombia*, *supra*, pars. 142 and 143.

194 Regarding the procedural activity of the person seeking justice, the Court has taken into consideration whether their procedural conduct has contributed to some degree to unduly prolonging the process. *Cf. Case of Cantos v. Argentina. Merits, Reparations, and Costs.* Judgment of November 28, 2002. Series C No. 97, par. 57, and *Case of Bedoya Lima et al. v. Colombia*, *supra*, pars. 142 and 144.

195 The Court has found that as the ones in charge of the process, judicial authorities are obliged to direct and guide the judicial proceeding so as not to sacrifice justice and due process of law to formalism. *Cf. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations, and Costs.* Judgment dated November 25, 2003. Series C No. 101, par. 211; and *Case of Ríos Avalos et al. v. Paraguay, supra,* pars. 167 and 172, and *Case of Bedoya Lima et al. v. Colombia*, *supra,* par. 142.

196 The Court has found that if the passage of time has a significant impact on the judicial situation of the person, the proceedings must be carried out more promptly so that the case is decided as soon as possible. *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations, and Costs.* Judgment of November 27, 2008. Series C No. 192, par. 155, *Case of the Employees of the Fireworks Factory of Santo Antonio de Jesus v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of July 15, 2020. Series C No. 407, pars. 223, 229, 234, 238, and 240, and *Case of Bedoya Lima et al. v. Colombia*, *supra*, pars. 142 and 145.

197 *Cf. Case of Anzulado Castro v. Peru*, *supra*, par. 156, and *Case of Bedoya Lima et al. v. Colombia*, *supra,* par. 142.

198 The judge in charge of case 2637/04 indicated that the investigation of the facts has revealed more than 2,000 victims in almost 50 secret detention and torture centers, leading to the indictment of 266 people. *Cf.* Order of July 17, 2020 issued by the National Federal Criminal and Correctional Court No. 3 (evidence file, volume IV, annex 14 to the answering brief, folio 11060).

in the proceedings.

181. Regarding the third element of analysis—the actions taken by judicial authorities—it should especially be noted that the complexity of the facts required, in the State's justification, formulating and executing a "strategy" for prosecuting the cases. Thus, the institutions of the justice system identified mechanisms aimed at "making it possible to bring the cases to trial effectively," which meant a strategy based on "prioritizing" the cases. As a result, according to expert witness Pablo Parenti, the prioritization meant that the processes were "elevated" to trial in "tranches," which in turn entailed joining cases for prosecution and, consequently, other processes were faced with a "wait" because they were not part of the set of prioritized ones. According to the expert witness, Resolution PGN 13/08 of the Attorney General of the Nation and the "Guidelines" for its implementation[199] represent "an action guide for prosecution" and "[d]efine a strategic model aimed at making maximal use of the evidence."[200]

182. The Court notes that the case prioritization strategy constitutes one of the tools devised by the Argentine judicial system to address the complexity of the processes and the massive number of facts to be processed, prosecuted, and punished. Regarding this strategy, called "exemplary" by the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence,[201] the Commission and the representatives did not raise specific objections, and therefore the Court does not have reason to question it. Essentially, this strategy meant that under the prioritization strategy established, each case had to wait for as long as necessary to move to the next procedural phase. However, in the specific case, with regard to the facts perpetrated against Ms. Grisonas Andrijauskaite and her children, Anatole and Victoria, in view of the convictions handed down, the strategy did not amount to a denial of justice.

183. In more general terms, the Court does not find that the actions of the judicial authorities in charge of the different processes caused *per se* an unjustified delay, something that was also not specifically argued by the Commission and the representative. Although the latter alluded to "delays and omissions" in the investigation of the facts committed against Anatole and Victoria, which was the reason for specific pleadings in the processing of the judicial procedure (*supra* para. 100), its argument did not identify a specific shortcoming in the judicial proceedings. On the contrary, it can be inferred from the argument that the objection is over a disagreement with the judicial criteria or, ultimately, with the prioritization criteria applied to the specific case.[202]

184. With regard to prosecution for the acts committed against Julien Cáceres, the Court

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[199] See, "Pautas para la implementación de la Resolución PGN 13/08," issued by the Attorney General of the Nation on March 3, 2008, which instructs prosecutors to "prioritize bringing to trial cases of grave human rights violations committed during State terrorism." These "guidelines" were prepared by the Prosecutor Unit for Coordination and Follow-up on cases of human rights violations committed during State terrorism. Available at: https://www.mpf.gob.ar/Institucional/UnidadesFE/pautas-para-la-impl-13-08.pdf.

[200] *Cf.* Written expert opinion rendered by Pablo Parenti (evidence file, volume XI, written expert opinions, folios 16896 and 16921).

[201] *Cf.* Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, UN Doc. A/HRC/27/56, August 27, 2014, pars. 35, 36, 41, 44 to 74, 105, and 118. According to the Special Rapporteur, a "prioritization strategy" consists of establishing " a strategic order in which cases [...] are investigated and prosecuted," which is justified in that, in situations resulting from the action of "complex systems organized with criminal intent," judicial systems "show themselves unable to deal with their caseloads while offering all required due process and fair trial guarantees," and thus, "not adopting a prioritization strategy may be particularly detrimental."

[202] The representative pointed out that even though the facts of the case "constituted a single set of very serious behaviors," the judge "inexplicably split the investigation" to "send to oral trial the prosecution of the crimes perpetrated against the parents, yet failing to include and rather leaving out [...] the very serious crimes" committed against Anatole and Victoria. *Cf*. Brief filed on September 18, 2017, by Eduardo Marques Iraola, on behalf of Anatole Alejandro Larrabeiti Yáñez, before Federal Criminal and Correctional Court No. 3 in case No. 2637/04 (evidence file, volume I, annex 21 to the Report on the Merits, folios 1546 to 1562).

recalls that, to date, those responsible have not been punished. In this regard, the decision to acquit the defendants for the "homicide" of the alleged victim was overruled on February 27, 2019 and, consequently, the proceedings were handed back down "for consideration." Likewise, as confirmed by the resolution issued in September 2019 by the Oral Court, on July 5 of the same year, the Federal Chamber of Criminal Cassation declared "[inadmissible] the extraordinary appeal" filed by the defense of the accused whose acquittal was annulled. In response, the defense filed a motion for reconsideration of dismissal of appeal "for denial of the federal extraordinary appeal," which, since then and as of the date this Judgment is issued, awaits a hearing before and resolution by the Supreme Court. In view of the failure to resolve the appeal, the Oral Court ruled that it still "should not" proceed as ordered by the Chamber.[203]

185. In this regard, this Court notes that the intention of the motion for reconsideration of dismissal of appeal is not to examine the complexity of the facts under investigation or the joinder of the cases into a single process, but instead is to pursue a hearing and a decision as to specific grounds of appeal of the denial of a remedy by the lower court. In this regard, expert witness Pablo Parenti stated that "one of the main problems" faced by the trial system in the current situation is "excessive delay, especially in the appeals process."[204] In short, this Court finds that, given the content of the remedy sought, the delay of more than two years to process an appeal that, in the opinion of the domestic courts, hinders prosecution of acts of such magnitude as seen in this case, exceeds the realm of what could be considered reasonable.

186. It should be added that the State also tried to justify the lack of punishment for the facts committed against Julien Cáceres on foreign authorities' refusal to grant the request to extradite the persons who were to be charged. This argument is based on the inter-State cooperation needed to fight impunity (*supra* para. 121); nevertheless, the Court recalls that the decisions handed down in cases 2261 and 2390, failed to clarify or punish the serious acts committed against Julien Cáceres, and notes that they were unrelated to the denial of extradition. The State's international responsibility is therefore beyond dispute.

187. However, the Court considers it necessary to draw a connection to another element to assess the reasonableness of the time elapsed. The Court recalls that the facts of the case began as a result of the operation of September 26, 1976. In 1986 and 1987, Laws No. 23,492 and 23,521 were enacted, which prevented the prosecution and punishment of "crimes committed during the dictatorship," with the exception of the crimes of "abduction and concealment of minors" and "replacement of civil status." The situation deriving from these laws lasted until March 6, 2001, when a federal judge declared them invalid,[205] a decision that was upheld on November 9, 2001.[206] In 2003, Law No. 25,779 declared both laws "null and void." Lastly in a judgment handed down on June 14, 2005, in the case known as "Simón," the Supreme Court of the Nation declared Law 25,779 to be "valid" and Laws 23,492 and 23,521 "to have no effect," along with "any act based on them that could impede the progress of the proceedings […] or the prosecution and eventual conviction of those responsible, or in

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[203] *Cf.* Resolution issued by Federal Oral Criminal Court No. 1 in September 2019, case No. 2261 (evidence file, volume IV, annex VII to the pleadings and motions brief, folios 2745, 2746, and 2750).

[204] *Cf.* Written expert opinion rendered by Pablo Parenti (evidence file, volume XI, written expert opinions, folios 16930).

[205] *Cf.* Resolution issued by the National Federal Criminal and Correctional Court No. 4 on March 6, 2001, case 8686/2000, "Simón, Julio, Del Cerro, Juan Antonio regarding abduction of minors under 10 years of age," in which, explicitly invoking the jurisprudence of the Inter-American Court, it was stated that "[t]he amnesty decree […] affected […] the right of the victim and their relatives to obtain justice through effective remedies against those responsible for violating their human rights."

[206] *Cf.* Resolutions issued by Chamber II of the National Federal Criminal and Correctional Chamber on November 9, 2001, case 17,889, "Simón, Julio appeal," and case 17,890, "Del Cerro, J. A. regarding complaint." In these decisions, the Chamber, citing the Barrios Altos case, found that "the State cannot invoke internal difficulties to evade its duty to investigate the facts with which it violated the [American] Convention and punish those who are criminally responsible for them."

any way hinder the investigations […] of crimes against humanity"[207] (*supra* paras. 72, 73, and 76 to 78).

188. Based on the foregoing, this Court notes that in terms of the time elapsed, the content of Laws 23,492 and 23,521 ostensibly affected compliance with the duty to investigate and punish the serious human rights violations committed. Although these laws were not directly applied in the judicial proceedings (*infra* para. 194), they amounted to an obstacle to effectively launching those proceedings, resulting in the prolonged delay in guaranteeing the victims' right to justice for the crimes committed. Consequently, this element must be taken into account in cases such as the present one, insofar as the delay is attributable solely to the State, causing clear harm to the rights of the alleged victims.[208] This is exacerbated as regards the investigation and punishment of the crimes of "abduction and concealment of minors" and "replacement of civil status" of which Anatole and Victoria were victims, since these crimes were excluded from the "impunity laws" and the State did not provide justification for the excessive delay between the commission of the acts in 1976 and the convictions handed down in 2012 and 2021, respectively (*supra* paras. 173 and 174).

189. With regard to the fourth element of analysis, referring to impact that the procedural delay had on the interested parties, it should be recalled that forced disappearance entails a multiplicity of offenses and is continuing in nature. It therefore has a lasting impact on the relatives of the disappeared persons—in this case, Anatole and Victoria, who are awaiting clarification of what happened and the whereabouts of their father and mother. Similarly, the delay in processing and resolving the judicial proceedings continues to have a significant impact on the legal situation of the alleged victims, and thus a greater effort is required to expedite the cases.

190. Consequently, the excessive delay of the different proceedings launched to prosecute the facts of this case produced a violation of the guarantee of a reasonable time. Also, with regard to the specific facts committed to the detriment of Mario Roger Julien Cáceres, because the prosecution and punishment of those responsible remains pending 45 years after he first disappeared, the State has failed to comply with its obligation to clarify these facts, amounting to a breach of the provisions of Article I(b) of the ICFDP.

191. It should be noted that the representative also pointed to a delay in "addressing" the so-called "spoils of war." However, as indicated by the judge in the case, notwithstanding the fact that the alleged victims had not brought the civil action in the specific case, there was no evidence that the property where the September 26, 1976, operation took place "was owned by the [Julien Grisonas] family," nor was "any documentary evidence proving [its] ownership" provided.[209] Therefore, the Court finds that in view of the discrepancies in the arguments presented, it does not have the elements necessary to analyze the alleged violation of the guarantee of a reasonable time in terms of the intended response regarding the property damage referenced by the representative.

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[207] *Cf.* Judgment issued by the Supreme Court of Justice of the Nation on June 14, 2005, case of "Simón, Julio Héctor *et al*. regarding illegitimate deprivation of liberty, etc. – case no. 17,768–." The Supreme Court found as follows:

> [T]he case law of the Inter-American Court […] constitute[s] an essential guideline for interpreting the duties and obligations derived from the American Convention […]. [T]he "Barrios Altos" case set strict limits on the power of Congress to grant amnesty, preventing it from covering facts such as those covered by the full stop and due obedience laws. […] [T]here can be no delay in removing the full stop and due obedience laws, and it must be done in such a way that no legal obstacle can arise from them to the prosecution of facts such as those constituting the subject of this case. This means that those who were beneficiaries of such laws can invoke neither the prohibition of retroactivity of the most serious criminal law nor *res judicata*.

[208] *Cf. Mutatis mutandis*, *Case of the Peasant Community of Santa Bárbara v.* Peru, *supra*, par. 259.

[209] *Cf.* Order of July 17, 2020 issued by the National Federal Criminal and Correctional Court No. 3 (evidence file, volume IV, annex 14 to the answering brief, folios 11024 and 11025).

192. Lastly, the Commission and the representative argued that the mere existence of Laws 23,492 and 23,521, in view of the prohibition on applying amnesties or otherwise obstructing the prosecution and punishment of crimes against humanity, amounts to autonomous violations of the rights set forth in the American Convention.

193. The Court recalls that based on the principle of complementarity that informs the Inter-American Human Rights System, State responsibility under the American Convention can be demanded internationally only after the State has had the opportunity to declare the violation of a right and, by its own means, redress the damage caused.[210] Likewise, review of compliance with human rights conventions is useful for applying international law—in this case, international human rights law, and specifically the American Convention and its sources, including this Court's case law.[211] Review of compliance with human rights conventions thus constitutes a function and task of all government authorities,[212] who within the framework of their respective competences and the corresponding procedural regulations, are required to review and ensure, *ex officio*, that human rights are respected and guaranteed. They must block the enactment or enforcement of any laws that would violate these rights, and this in turn requires a joint interpretation of domestic law and international law in order to prioritize whatever is most favorable to the protection of rights. Proper domestic review of compliance with human rights conventions strengthens the complementarity of the inter-American system and the effectiveness of the Convention.[213]

194. In this regard, this Court finds that both the judgment issued by the Supreme Court on June 14, 2005 and the 2001 rulings issued by the lower courts provided adequate review of compliance with human rights conventions, and in conjunction with the entry into force of Law No. 25,779, it was possible to reopen and launch processes aimed at investigating, prosecuting, and punishing the serious crimes committed.[214] A review of the different criminal cases filed around the facts of this case finds that the domestic courts explicitly referenced and applied the ruling in the "Simón" case, as well as other decisions issued by the Supreme Court and consistent with its reasoning.[215] Thus, the purpose of applying these ruling or other concurrent ones was, in each case: (i) to dismiss the defendants' arguments that Law 25,779 was invalid and that therefore Laws 23,492 and 23,521 were valid;[216] (ii) to deny the pleadings of *res judicata* and claims that criminal action had lapsed under the statute of limitations;[217]

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210 *Cf.* Case of the Santo Domingo Massacre *v. Colombia*, *supra,* par. 142; and *Case of Urrutia Laubreaux v. Chile. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 27, 2020. Series C No. 409, par. 90.

211 *Cf. Inter alia*, *Case of Almonacid Arellano et al. Chile. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 26, 2006. Series C No. 154, par. 124; *Case of Urrutia Laubreaux v. Chile*, *supra*, par. 93; and *Case of Ríos Avalos et al. v. Paraguay, supra* par. 198; and *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras.* Judgment of August 31, 2021. Series C No. 432, par. 45.

212 *Cf. Case of Gelman v. Uruguay*, *supra*, par. 239; *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and Reparations.* Judgment of September 1, 2020. Series C No. 411, par. 99; and *Case of the Miskito Divers (Lemoth Morris et al.) v.* Honduras, *supra*, par. 45.

213 *Cf. Case of Petro Urrego v. Colombia*, *supra*, par. 107; and *Case of Urrutia Laubreaux v. Chile*, *supra*, par. 93.

214 The Inter-American Court has found that the "prohibition to commit crimes against humanity is a ius cogens rule, and the punishment of such crimes is obligatory pursuant to the general principles of international law." *Cf. Case of Almonacid Arellano et al. v. Chile*, *supra*, par. 111 and 114; *Case of Herzog et al. v. Brazil*, *supra*, par. 232. *Case of Barrios Altos v. Peru. Merits.* Judgment of March 14, 2001. Series C No. 75, par. 41, and *Case of La Cantuta v.* Peru, *supra*, par. 114, and Advisory Opinion OC-26/20, November 9, 2020, *supra*, par. 106.

215 Among others, the judgment issued by the Supreme Court on July 13, 2007, M. 2333. XLII. *et al.*, case of "Mazzeo, Julio Lilo *et al.* regarding of cassation and unconstitutionality appeal" (*supra* footnote 37), which declared decree 1002/89, under which certain persons had been pardoned, "unconstitutional."

216 *Cf.* Judgment issued by Federal Oral Criminal Court No. 1 on May 31, 2011, case No. 1627 (evidence file, volume I, annex 2 to the Report on the Merits, folio 944), and Judgment issued by Court IV of the Federal Chamber of Criminal Cassation on February 27, 2019, case No. 2637/2004 (evidence file, volume IV, annex 17 to the answering brief, folio 14310).

217 *Cf.* Judgment issued by Federal Oral Criminal Court No. 6 on September 17, 2012, cases No. 1351, 1499, 1604, 1584, 1730, and 1772 (evidence file, volume IV, annex 18 to the answering brief, folio 14830), and judgment

or (iii) to support the classification of the facts prosecuted as crimes against humanity[218] in order to denote their magnitude as "inhumane acts that, due to their scope and seriousness, extend beyond the limits of what is tolerable for the international community, which must […] demand their punishment,"[219] as the Argentine Supreme Court affirmed in a subsequent ruling.[220]

195. Therefore, in the matter under analysis, it was the State that provided a solution to the situation that violated human rights, recognizing that the law was contrary to the Convention, nullifying its effects, and providing redress—legally speaking and within the scope of the specific case—for its harmful consequences.[221] In short, it was an exercise that, through the proper application of a jurisprudential dialogue, strengthened the domestic guarantee of human rights. In this regard, the complementary nature of the function exercised by this Court prevents it from declaring the autonomous violation alleged.

B.2. Codification of forced disappearance of persons as a criminal offense in the Argentine legal system and failure to apply it to the specific case

196. The Court has indicated that Article 2 of the American Convention establishes the general obligation of every State Party to adapt its domestic law to the provisions of the Convention in order to guarantee the rights recognized therein, which means that measures of domestic law must be effective (the *effet utile* principle).[222] Thus, codification of the forced disappearance of persons as an autonomous criminal offense and adoption of an explicit definition of the relevant punishable conduct are essential for the effective eradication of this practice,[223] supported under Article III of the ICFDP.[224]

197. The Court recalls that the Argentine State deposited the instrument of ratification of the ICFDP on February 28, 1996. With the entry into force for the State of this international instrument, it has a specific obligation to codify the criminal offense of forced disappearance of persons, which it did with the enactment, on May 5, 2011, of Law 26,679, whereby article 142(3) was added to the National Criminal Code, Law 11,179, para. 79).

198. It is worth recalling here that these cases did not seek prosecution of the acts as an autonomous criminal offense. In only one of the rulings did the judges perform an analysis of the facts as constituting forced disappearance according to international standards, to

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issued by Court IV of the Federal Chamber of Criminal Cassation on May 4, 2018, case No. 13445/1999 (evidence file, volume IV, annex 17 to the answering brief, folio 14171).

218 *Cf.* Judgment issued by Federal Oral Criminal Court No. 1 on November 3, 2017, cases 2261 and 2390 (evidence file, volume IV, annex 13 to the answering brief, folios 9737), and Judgment issued by Court IV of the Federal Chamber of Criminal Cassation on February 27, 2019, case No. 2637/2004 (evidence file, volume IV, annex 17 to the answering brief, folio 14453).

219 *Cf.* Judgment issued by Federal Oral Criminal Court No. 1 on March 3, 2021, case No. 3002 (evidence file, volume X, annexes on supervening facts, folios 16814 and 16815).

220 *Cf.* Judgment issued by the Supreme Court of Justice of the Nation on July 13, 2007, M. 2333. XLII. *et al.*, case of "Mazzeo, Julio Lilo *et al.* regarding of cassation and unconstitutionality appeal," explicitly citing the case of *Almonacid Arellano*. See, *Case of Almonacid Arellano et al. Chile*, *supra*, par. 105.

221 *Cf. Mutatis mutandis*, *Case of the Peasant Community of Santa Bárbara v.* Peru, *supra*, par. 250, and *Case of Tenorio Roca et al. v. Peru*, *supra*, pars. 217 and 218.

222 *Cf. Case of "The Last Temptation of Christ " (Olmedo Bustos et al.) v. Chile. Merits, Reparations, and Costs.* Judgment dated February 5, 2001. Series C No. 73, par. 87; *Case of Alvarado Espinoza et al. v. Mexico*, *supra*, par. 258; and *Case of the Miskito Divers (Lemoth Morris et al.) v.* Honduras, *supra*, par. 45.

223 *Cf. Case of Gómez Palomino v.* Peru, *supra*, par. 92; *Case of Alvarado Espinoza et al. v. Mexico*, *supra*, par. 258, and *Case of Garzón Guzmán et al. v.* Ecuador, supra, par. 79. See Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, General comment on forced disappearance as a continuing offense, January 26, 2011, UN Doc. A/HRC/16/48, par. 11.

224 Article III of the ICFDP: "The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. […]."

highlight the serious nature of the facts of the case.[225]

199. In this regard, the Court recalls that its case law includes cases in which the failure to codify or apply the autonomous criminal offense of forced disappearance of persons at the domestic level did not hinder the processes launched to investigate, prosecute, and punish the facts. However, the application of different criminal offenses must always be consistent with the seriousness of the facts and with the complex human rights violation alleged.[226]

200. In this regard, given the allegation of State responsibility for "delays" in codifying the crime of forced disappearance, it should be recalled that in the case of *Torres Millacura et al. v. Argentina*, in which, as of the date of submission before this jurisdiction, the State had not yet codified the specific criminal offense in its criminal legislation, the Court reiterated that it is not within its jurisdiction to rule in the abstract, as long as it is not alleged that a failure to codify or apply the criminal offense of forced disappearance of persons constituted an impediment or obstacle to investigating the facts in the specific case.[227]

201. Therefore, what must be analyzed is whether the failure to prosecute the autonomous criminal offense of forced disappearance in domestic proceedings affected or hindered the investigation and clarification of the facts. In this regard, with respect to the crimes committed to the detriment of Ms. Grisonas Andrijauskaite and her children, Anatole and Victoria, the Court notes that alternate criminal offenses were applied that, taken together, denoted the seriousness of what happened. Indeed, as established (*supra* paras. 102 to 104, 107, 109 and 170 to 174), the elements that formed part of the charges and subsequent convictions involving each of the injured persons, as well as their legal classification, pointed to the illegal deprivation of their liberty, submission to acts of torture and inhumane conditions, the direct intervention of State agents, and the violence involved in the commission of the criminal acts.

202. Regarding the facts that harmed Anatole and Victoria, the judicial authorities also took into account "the abductions, retentions and concealments" of which they were victims, as well as the violation of the right to recognition of their juridical personality, which suffered harm in the framework of the multi-offense nature of the forced disappearance of persons. At the same time, they repudiated that, as part of the "general plan of annihilation", they "had suppressed, hidden, or made uncertain their identities."[228]

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[225] In the judgment in the case known as the "Systematic plan for the appropriation of children," the judges indicated that the proven facts constituted cases of forced disappearance of persons, given that "international custom" had already established that the crime "constituted a serious violation of human rights". *Cf.* Judgment issued by Federal Oral Criminal Court No. 6 on September 17, 2012, cases No. 1351, 1499, 1604, 1584, 1730, and 1772 (evidence file, volume IV, annex 18 to the answering brief, folio 14804).

[226] In the case of *Ticona Estrada et al. v. Bolivia*, the Court found that, from the beginning of the respective criminal proceedings at the domestic level, "Bolivian [criminal] legislation provided criminal rules leading to the effective observance of the guarantees established in the [American] Convention with respect to the individual rights to life, humane treatment, and personal liberty," and it therefore conclude that "in the instant case, it [had] not been proven that the lack of legal definition of the autonomous crime of forced disappearance [had] hindered the effective development of the criminal procedure." *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations, and Costs.* Judgment of November 27, 2008. Series C No. 191, par. 104. In the case of *Goiburú et al. v. Paraguay*, the Court noted that "The disparity in the categorization of the facts at the domestic and international level was reflected in the criminal proceedings," in which convictions had been handed down "for offenses such as abduction, illegal deprivation of liberty, abuse of authority, association or conspiracy to commit a crime, injuries, coercion or threats and homicide." However, the Court "recognizes that the illegal and arbitrary detention, torture and forced disappearance of the victims have not remained in total impunity through the application of other categories of crime." *Cf. Case of Goiburú et al. v. Paraguay, supra*, par. 92. For its part, in the case of *Vereda la Esperanza v. Colombia*, the Court indicated that "regardless of the *nomen iuris*, [in the domestic proceedings], the investigation [had been] conducted to determining the factual circumstances and […] elements related to the crime of forced disappearance." *Cf. Case of Vereda La Esperanza v. Colombia. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of August 31, 2017. Series C No. 341, par. 207.

[227] *Cf. Case of Torres Millacura et al. v. Argentina. Merits, Reparations, and Costs.* Judgment of August 26, 2011. Series C No. 229, par. 149. See also, *Case of Garzón Guzmán et al.* Ecuador, supra, par. 81.

[228] *Cf.* Judgment issued by Federal Oral Criminal Court No. 6 on September 17, 2012, cases No. 1351, 1499,

203. In the end, the domestic processes have revealed the planned and coordinated participation of members of the security, police, and military forces, the intelligence services, and in one case, even the involvement of someone at the highest levels of government at the time of the facts, clearly indicating the extreme seriousness of what happened. All of this shows that, regardless of the *nomen iuris* of the criminal offense charged and effectively applied at the time of conviction, the investigation was carried out and aimed at determining factual circumstances that coincide with elements of the crime of forced disappearance. In short, as regards the crimes committed against Ms. Grisonas Andrijauskaite, Anatole, and Victoria, the failure to apply the autonomous criminal offense has not meant that the facts have gone unpunished.[229]

204. Regarding the punishments considered in those processes, the Court recalls that current criminal law in Argentina establishes, for those guilty of the crime of forced disappearance, a prison sentence of 10 to 25 years and absolute and perpetual disqualification from the exercise of any public function or private security tasks, as well as life imprisonment "if the victim is a […] person under [eighteen] (18) years of age" (article 142(3) of the Penal Code, Law 11,179). Therefore, the penalties actually applied in the cases in question are consistent with the seriousness of the conduct committed.

205. Next, as regards the facts causing harm to Julien Cáceres, the Court notes that the investigation carried out[230] and the corresponding acquittal specifically addressed the fact of the death of the alleged victim, through prosecution of the criminal offense of "aggravated homicide with malice aforethought," without taking into account other concurrent elements, such as the deprivation of liberty and the measures taken by the perpetrators to deny information about the incident and erase all traces of what happened to the body. The judges who handed down the acquittal even concluded that it was not possible to "find that the murder was part of the 'shared plan' designed by the State's repressive forces, within the framework of the 'anti-subversive struggle.'"[231]

206. This view, in the opinion of this Court, shows that, in the analysis of these facts—unlike what happened with the rest of the members of the Julien Grisonas family—the actions of the domestic authorities were not appropriate to the seriousness of what happened, the context in which it happened, and ultimately, the complex violation of human rights that the forced disappearance of persons entails. In short, the failure to apply the autonomous criminal offense of forced disappearance led to an approach to the facts that was isolated and fragmented, rather than comprehensive in addressing the offense's multiple, intricately interrelated elements.[232] The outcome has been that to date, the facts have not been clarified, nor has there been any punishment for what happened to the detriment of Julien Cáceres.

207. Lastly, because resolution of the judicial process is still pending, the Court deems it

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1604, 1584, 1730, and 1772 (evidence file, volume IV, annex 18 to the answering brief, folio 14804).

229 *Cf. Mutatis mutandis*, *Case of Vereda La Esperanza v. Colombia*, *supra,* par. 207.

230 The indictment in which the facts were classified as "aggravated homicide" was issued on July 12, 2012, and the corresponding order to "proceed to trial" reiterating that legal classification was issued on September 25, 2013. *Cf.* Order of July 17, 2020 issued by the National Federal Criminal and Correctional Court No. 3 (evidence file, volume IV, annex 14 to the answering brief, folio 11002). Additionally, the plaintiff indicated at the time that the applicable classification was that of forced disappearance. *Cf*. Brief filed on November 19, 2012 by Eduardo Marques Iraola, on behalf of Anatole Alejandro Larrabeiti Yáñez, before Federal Criminal and Correctional Court No. 3, case No. 2637/04 (evidence file, volume I, annex 4 to the Report on the Merits, folio 1449).

231 *Cf.* Judgment issued by Federal Oral Criminal Court No. 1 on November 3, 2017, cases 2261 and 2390 (evidence file, volume IV, annex 13 to the answering brief, folios 10771, 10779, 10780, 10783, and 10784).

232 *Cf. Case of Heliodoro Portugal v. Panama*, *supra*, para. 112, and Case of *Alvarado Espinoza et al. v. Mexico*, *supra*, par. 166. See Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances on norms and public policies for effectively investigating enforced disappearances, General comment on enforced disappearance as a continuing offense, UN Doc. A/HRC/4/13/Add.3, August 7, 2020, par. 51.

pertinent to rule on the specific criminal offense applied. In this regard, although in the 2017 ruling, the Oral Court did not elaborate on the matter, the judge in charge of the preliminary investigation stated that because the criminal offense was not on the books on September 26, 1976, (when the forced disappearance of the alleged victim began), "applying it to the facts […] would be a flagrant violation of the principle of freedom from ex post facto law involving the most severe criminal law."[233] In this regard, the Court reiterates its settled case law to the effect that the forced disappearance of persons is a crime whose commission remains ongoing so long as the whereabouts of the disappeared person are not known or their remains are identified with certainty.[234] Therefore, when the crime of forced disappearance of persons is codified in the books, because the commission of the criminal offense remains ongoing, the new law applies without incurring in ex post facto enforcement.[235]

208. In conclusion, the State is responsible for having failed to comply with the obligation set forth in Article 2 of the American Convention, read in conjunction with Articles 8(1) and 25(1), and with the provisions of Article III of the ICFDP, in view of the delay in codifying the criminal offense of forced disappearance of persons, which, in this specific case, impacted investigation and punishment of the facts related to Julien Cáceres.

B.3. The search for the whereabouts of Victoria Lucía Grisonas Andrijauskaite and Mario Roger Julien Cáceres and their relatives' right to know the truth

209. The Court recalls that on numerous occasions, it has ruled on States' obligation to conduct a genuine search during which every effort is made, systematically and rigorously, with the suitable and appropriate human, technical and scientific resources, to establish the whereabouts of the disappeared persons or their remains.[236] The Court has found that returning the body of a disappeared person is extremely important for their next of kin, because it allows for proper burial her in keeping with their beliefs, and also to bring closure to the grieving process that they have been experiencing over the years.[237]

210. In the instant case, there is no conclusive information on the whereabouts or fate of the remains of Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite.

211. Regarding Ms. Grisonas Andrijauskaite, no information was provided and the body of evidence does not reveal procedures or actions undertaken by the State to fulfill its obligation to investigate her whereabouts and, where applicable, search for and locate her remains.

212. However, the documents provided by the State include a note from July 27, 2020, issued by the president of the Argentine Forensic Anthropology Team indicating that the alleged

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233 *Cf.* Order of July 17, 2020 issued by the National Federal Criminal and Correctional Court No. 3 (evidence file, volume IV, annex 14 to the answering brief, folio 11017).

234 *Cf. Inter alia*, *Case of Velásquez Rodríguez v. Honduras.* Merits, *supra*, pars. 155 to 157, and *Case of Gelman v. Uruguay. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of November 19, 2020, Considering 13.

235 *Cf. Inter alia*, *Case of Tiu Tojín v. Guatemala*, *supra*, par. 77; *Case of Gelman v. Uruguay, supra*, par. 236; and *Case of Gelman v. Uruguay.* Monitoring compliance with Judgment, *supra*, Considering 13.

236 *Cf. Inter alia*, *Case of Contreras et al. v. El Salvador, supra*, par. 191; *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, Reparations, and Costs.* Judgment of November 20, 2012. Series C No. 253, par. 334; *Case of Garcia and relatives v. Guatemala. Merits, Reparations, and Costs.* Judgment of November 29, 2012, Series C No. 258, par. 200; *Case of Osorio Rivera and relatives v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 26, 2013. Series C No. 274, par. 251; *Case of Munarriz Escobar et al. v. Peru. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of August 20, 2018. Series C No. 355, par. 104; *Case of Terrones Silva et al. v.* Peru, *supra*, par. 203; *Case of Alvarado Espinoza et al. v. Mexico*, *supra*, par. 299, and *Case of Garzón Guzmán et al. v.* Ecuador, supra, par. 74.

237 *Cf. Case of the "Las Dos Erres" Massacre v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 24, 2009. Series C No. 211, par. 245, and *Case of Guachalá Chimbo et al. v.* Ecuador, *supra*, par. 228.

victim "remains missing, and no specific hypothesis has been offered with respect to her identity." The note goes on to state:

> [The] case [of Ms. Grisonas Andrijauskaite], like that of thousands of people reported missing in the same context, depends on a massive process in which genetic sequences extracted from skeletal remains recovered in circumstances suggesting the presence of forced disappearance […] are compared with genetic reference profiles provided by close relatives of the victims. […] The sequence from the same reference (daughter of [the Julien Grisonas couple]) has not produced a significant match with human remains indicative of identity to date.[238]

213. Based on the foregoing, without ignoring the complexity involved in searching for a disappeared person in contexts such as this, the Court finds that the State's obligation to investigate the whereabouts and, if applicable, locate the remains of Ms. Grisonas Andrijauskaite cannot be exhausted by mass comparison of genetic sequences. On the contrary, in order to be effective and compatible with due diligence, the State's obligation in this regard must include all possible efforts, carried out systematically, rigorously, and with all appropriate and suitable means,[239] including requesting the cooperation of other States,[240] none of which is understood to have taken place based on what has been reported.

214. Although it has not found any breach of due diligence in criminal investigations, the Court highlights the autonomous nature of the obligation to search for and locate missing persons,[241] which must be carried out efficiently, comprehensively, adequately, and diligently, independent of those investigations.[242] This autonomous obligation is closely related to the right of family members to know the truth about the fate of their loved ones. Based on the foregoing, the Court concludes that the State did not comply with its obligation to carry out a systematic and rigorous search with all due diligence to establish the whereabouts of Ms. Grisonas Andrijauskaite.

215. In the case of Julien Cáceres, by contrast, the information provided on the process reveals that a series of procedures ordered by the court in charge of the preliminary investigation aimed at locating his remains were carried out. Of particular interest is the information provided by the authorities of the Municipal Cemetery of the Partido de General San Martín, along with the documentary evidence collected. According to the content of the note provided, the EAAF completed its analysis of all this material and was able to conclude the following:

> There are serious indications that the person whose death was documented by means of a death certificate […] in the Civil Registry of San Martin […], whose body was originally buried in an individual grave in the

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238 *Cf.* Note from the Argentine Forensic Anthropology Team of July 27, 2020, addressed to the National Director of International Legal Affairs in Human Rights of the Ministry of Justice and Human Rights (evidence file, volume IV, annex 25 to the answering brief, folios 15924 and 15925).

239 *Cf. Case of Contreras et al. v. El Salvador, supra*, par. 191, and *Case of Garzón Guzmán et al. v.* Ecuador, supra, par. 74.

240 *Cf. Case of Gelman v. Uruguay*, *supra*, par. 234, and *Case of Contreras et al. v. El Salvador, supra*, par. 152.

241 *Cf. Case of Garzón Guzmán et al.* Ecuador, *supra*, par. 75. In this sense, the International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations on December 20, 2006, in its Articles 15, 19(1), 24(2), 24(3), 25(2), and 25(3) refers to the obligation to search for and locate the disappeared persons, specifically and distinct from the criminal investigation. The Committee on Enforced Disappearances has reaffirmed the specific obligations that exist for States in this matter. *Cf.* Committee on Enforced Disappearances, Concluding observations on the report submitted by Spain under Article 29, paragraph 1, of the Convention, UN Doc. CED/C/ESP/CO/1, December 12, 2013, par. 32, Concluding observations on the report submitted by Burkina Faso under Article 29, paragraph 1, of the Convention, UN Doc. CED/C/BFA/CO/1, May 24, 2016, par. 40; Concluding observations on the report submitted by Honduras under Article 29, paragraph 1, of the Convention, UN Doc. CED/C/HND/CO/1, July 4, 2018, par. 25(1); Concluding observations on the report submitted by Chile under Article 29, paragraph 1, of the Convention, UN Doc. CED/C/CHL/CO/1, May 8, 2019, par. 27(a). Also see Committee on Enforced Disappearances, Guiding principles for the search for disappeared persons, UN Doc. CED/C/7, May 8, 2019, Principles 6 and 13.

242 See Committee on Enforced Disappearances, Guiding principles for the search for disappeared persons, UN Doc. CED/C/7, May 8, 2019, Principles 1, 4 to 8, 10, 12, 13, 15, and 16.

> Municipal Cemetery [of that town], […] is that of J[ulien Cáceres]. […] The similarities of time and place […] support such an outcome. Unfortunately, this cannot be objectively corroborated: […] the transfer of the remains to the common ossuary limits the possibility of recovering and subsequently identifying them. […] The same is true with regard to the possibility of fingerprint identification. At least one set of fingerprints was extracted from the unidentified person […], but since these prints did not meet the minimum quality requirements, they were discarded (that is, they were not preserved in any medium). Therefore, it is impossible to establish objectively […] whether that man […] is, unequivocally, [Mr.] J[ulien] C[áceres]. […] [T]he fact of not being able to clarify that point unequivocally […] leads to the possibility, remote but not impossible, that [his] body […] was deposited in a different place […]. Under such conditions, the possibility of identifying the remains […] depends on […] discovering another body that, based on a comparison of its genetic sequence […] can verify that it corresponds to the person sought […].[243]

216. Accordingly, in the Court's opinion, the analysis carried out by the EAAF does not, thus far, enable it to issue any conclusive and definitive statements on the location and identification of the remains of Julien Cáceres. In this regard, this Court has repeatedly indicated that this does not entail simply the act of finding the remains of a certain person; rather, logically, it must include the performance of tests or analyses that make it possible to reliably verify that the remains correspond to that person.[244]

217. It should also be remembered that Anatole is a plaintiff in the criminal case investigating the whereabouts of his biological parents. As part of this process, he asked in 2012 for specific steps to be taken to continue the search, including explicitly requesting "the intervention" of the EAAF "to carry out exhumations and other work that in [its] criteria […] were deemed pertinent" (*supra* para. 100), and he reiterated the same request in 2013.[245] He added a final request in February 2020, that the EAAF be consulted to ascertain if there were "additional feasible […] measures" that could be taken to identify the remains.[246] According to the alleged victim, his requests were not answered.[247]

218. Based on the evidence in the case file, the Court infers that the various requests made by the alleged victim regarding the intervention of the EAAF were not explicitly answered. The EAAF team's specific reply to these requests was a July 2020 note that does not appear to have been prompted by the judicial proceedings or to have been added to the case file.[248] As a result, the son and daughter of the persons whose remains were being sought were not immediately notified of it, as was later confirmed by the representative. Similarly, although

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243 *Cf.* Note from the Argentine Forensic Anthropology Team of July 27, 2020, addressed to the National Director of International Legal Affairs in Human Rights of the Ministry of Justice and Human Rights (evidence file, volume IV, annex 25 to the answering brief, folios 15923 and 15925).

244 *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra*, par. 82, and *Case of the Peasant Community of Santa Bárbara v.* Peru, *supra*, par. 165.

245 *Cf.* Order of July 17, 2020 issued by the National Federal Criminal and Correctional Court No. 3 (evidence file, volume IV, annex 14 to the answering brief, folio 11032), and official letter of July 15, 2021 issued by National Federal Criminal and Correctional Court No. 3 (evidence file, volume XIX, evidence to facilitate adjudication of the case, folios 21239 and 21240).

246 *Cf.* Brief filed on February 25, 2020, by Eduardo Marques Iraola, on behalf of Anatole Alejandro Larrabeiti Yáñez, before Federal Criminal and Correctional Court No. 3 in case No. 2637/04 (evidence file, volume III, annex 6 to the pleadings and motions brief, folio 2737).

247 In his statement rendered in a public hearing before this Court, Anatole indicated as follows:

> [T]here are a lot of things related to procedural swiftness, […] some of them to date have not been answered, for example, […] the request for exhumation […] in the General Cemetery of San Martín […]. It is difficult […] it is very complex, even with the impressive and world-class team of forensic anthropologists that Buenos Aires has […]. However, it is one thing to be told that we are not going to do it, but another when they do not give you an answer, and yet another thing, but also valid, [that] all attempts were made.

248 According to the content of the EAAF note, it was in response to a request for information from the National Directorate of International Legal Affairs on Human Rights of the Ministry of Justice and Human Rights, to the effect that "yes, from a scientific point of view, it is possible to identify the alleged remains of [Mr.] Mario Julien Cáceres." *Cf.* Note from the Argentine Forensic Anthropology Team of July 27, 2020, addressed to the National Director of International Legal Affairs in Human Rights of the Ministry of Justice and Human Rights (evidence file, volume IV, annex 25 to the answering brief, folios 15923 to 15925).

the trial judge stated that he has maintained constant communication with the EAAF,[249] as far as this process is concerned, there is no evidence that the alleged victims have been duly informed so they can participate, be aware of, and witness, where applicable, the steps that could have been taken to arrive at the conclusions contained in the note.

219. The Guiding Principles for the Search for Disappeared Persons, approved by the Committee against Enforced Disappearance, establish that the victims, their representatives, their lawyers, and the persons authorized by them have the right to participate in the search efforts and access "information on the action taken and on the progress and results obtained," which entails the duty for the authorities "to provide regular and incidental information on the measures adopted [...] and on any obstacles" that arise.[250]

220. All this is understood to be included in demands for the right to know the truth, which, in addition to covering the right of the relatives of a victim of forced disappearance to know their fate and, if applicable, the location of the remains,[251] also includes the right to be informed of the proceedings carried out and the results obtained,[252] including any hypothesis or conclusion that may arise, in the highest possible detail and in accordance with the technical and scientific specifications that the subject merits. In any case, with respect to the rights of the alleged victims, it is the Court's view that the international proceeding is not the suitable forum for them to learn such information. On this issue, the Working Group on Enforced or Involuntary Disappearances has also affirmed that the right to the truth in relation to forced disappearances, refers—among other elements—to "the right to know about the progress and results of an investigation [with regard to] the fate or the whereabouts of the disappeared persons," entailing for the State the obligation to "have the results of these investigations communicated to the interested parties."[253]

221. This Court has indicated that although the right to know the truth has been fundamentally framed within the right to access to justice,[254] its nature is broad and, therefore, violations of it may affect different rights enshrined in the American Convention, depending

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[249] *Cf.* Order of July 15, 2021 issued by the National Federal Criminal and Correctional Court No. 3 (evidence file, volume XIX, evidence to facilitate adjudication of the case, folios 21246 and 21247).

[250] *Cf.* Committee on Enforced Disappearances, Guiding principles for the search for disappeared persons, UN Doc. CED/C/7, May 8, 2019, Principles 5(1) and 5(2).

[251] *Cf. Case of Velásquez Rodríguez v. Honduras.* Merits, *supra*, par. 181; *Case of Alvarado Espinoza et al. v. Mexico*, *supra*, par. 240, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 87. See, International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations on December 20, 2006, Article 24(2).

[252] *Cf. Case of Gelman v. Uruguay*, *supra*, par. 260, and Case of *Alvarado Espinoza et al. v. Mexico*, *supra*, par. 299.

[253] *Cf.* Human Rights Council, Working Group on Enforced or Involuntary Disappearances, General comment on the right to the truth in relation to enforced disappearance, January 26, 2011, UN Doc. A/HRC/16/48, pars. 1 and 5. The Human Rights Committee has also indicated in cases of forced disappearances that it is the State's obligation to provide relatives with "detailed information" on the investigation, in regards both to what happened and the fate of the remains of the disappeared persons. *Cf.* Human Rights Committee, *inter alia*, *Tikanath and Ramhari Kandel v. Nepal*, UN Doc. CCPR/C/123/D/2658/2015, Communication No. 2560/2015, August 16, 2019, par. 9; *Midiam Iricelda Valdez Cantú and María Hortencia Rivas Rodrígez v. Mexico*, UN Doc. CCPR/C/127/D/2766/2, Communication No. 2766/2016, December 23, 2019, para. 14, and *Malika and Merouane Bendjael v. Algeria*, UN Doc. CCPR/C/128/D/2893/2016, Communication No. 2893/2016, November 3, 2020, para. 10. See also Commission on Human Rights, Report of the independent expert to update the set of principles to combat impunity, Diane Orentlicher, E/CN.4/2005/102/Add.1, February 8, 2005, Principle 34, and Commission on Human Rights, Report of the United Nations Office of the High Commissioner of Human Rights, Study on the right to the truth, UN Doc. E/CN.4/2006/91, January 9, 2006, para. 28.

[254] *Cf. Inter alia*, *Case of Velásquez Rodríguez v. Honduras.* Merits, *supra*, par. 181; *Case of Bámaca Velásquez v. Guatemala.* Merits, *supra*, par. 201; *Case of Barrios Altos v. Peru.* Merits, *supra*, par. 48; *Case of Almonacid Arellano et al. Chile*, *supra*, par. 148; *Case of La Cantuta v.* Peru, *supra*, par. 222; *Case of Heliodoro Portugal v. Panama*, *supra*, pars. 243 and 244; *Case of the Members of the Village of Chichupac and neighboring communities of the Municipality of Rabinal v. Guatemala*, *supra*, par. 260; *Case of Vasquez Durand et al. v.* Ecuador, *supra*, par. 165; *Case of Guachala Chimbo et al. v.* Ecuador, *supra*, par. 213, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 88.

on the specific context and circumstances of the case.[255] In this case, after 45 years, the whereabouts and fate of the remains of Victoria Lucía Grisonas Andrijauskaite remain unknown, and there is no conclusive information regarding the remains of Mario Roger Julien Cáceres. Since the necessary efforts have not been made to apply all due diligence to ascertain the fate and, where applicable, locate the remains of Ms. Grisonas Andrijauskaite, and in view of the lack of response to the requests made to advance the efforts toward searching for the remains of Julien Cáceres and the subsequent failure to communicate, properly and in a timely fashion, a technical document with detailed information responding to the requests, this Court finds that the right to know the truth has been violated, to the detriment of Anatole and Victoria, son and daughter of Julien Grisonas. In this case, the violation falls under the rights to access to justice and to be informed, made aware of, and participate in the search efforts that protect the relatives of disappeared persons.

B.4. General conclusion

222. Based on all this, the Court concludes that: (a) there was an excessive and unjustified delay in processing the legal actions initiated to prosecute and punish the acts committed to the detriment of Victoria Lucía Grisonas Andrijauskaite and her children, Anatole and Victoria; (b) regarding the acts perpetrated against Mr. Mario Roger Julien Cáceres, 45 years after his forced disappearance began, the trial and punishment of those responsible remains pending; (c) the State's delay in codifying the criminal offense of forced disappearance of persons resulted in a failure to apply it in this specific case, affecting investigation and punishment of the incidents that harmed Julien Cáceres; (d) all necessary efforts with the proper due diligence have not been made to clarify the whereabouts and, where applicable, locate the remains of Ms. Grisonas Andrijauskaite; (e) the requests made to advance the search for the remains of Julien Cáceres were not answered; and (f) the son and daughter of the Julien Cáceres couple were not informed properly and in a timely manner of a technical document with detailed information answering their requests regarding the search for the remains of both persons.

223. Therefore, the Argentine State violated Articles 8(1) and 25(1) of the American Convention, read in conjunction with Articles 1(1) and 2 thereof, and Articles I(b) and III of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Anatole Alejandro and Claudia Victoria, both with the surnames Larrabeiti Yáñez. Likewise, the State violated the rights of both persons to know the truth concerning the whereabouts and fate of the remains of their biological father and mother.

224. However, the State is not responsible for failing to comply with the obligations derived from Articles 1, 6, and 8 of the ICPPT, or for the alleged failure to respect the prohibition on applying amnesties or other obstacles to prosecuting and punishing crimes against humanity.

VII.3
RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION AS REGARDS REPARATIONS FOR GRAVE HUMAN RIGHTS VIOLATIONS, READ IN CONJUNCTION WITH THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS AND ADOPT PROVISIONS OF DOMESTIC LAW[256]

225. The Court will now analyze the following issues: (a) non-applicability of the statute of limitations on actions to obtain redress for serious human rights violations, and (b) administrative mechanisms for providing reparations for serious human rights violations.

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[255] *Cf. Case of the Peasant Community of Santa Bárbara v.* Peru, *supra*, par. 265, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 86.

[256] Articles 8 and 25 of the American Convention, in relation to Articles 1(1) and 2 of the same instrument.

A. Non-applicability of the statute of limitations on actions to obtain redress for serious human rights violations

A.1. Arguments of the parties and of the Commission

226. The ***Commission*** argued that civil actions in cases of serious human rights violations are not subject to the statute of limitations, as provided for in article 2561 of the Argentine Civil and Commercial Code. It noted that the Supreme Court had found that civil actions in cases of serious human rights violations were in fact eligible for application of the statute of limitations with respect to forced disappearances that occurred during the dictatorship. This ruling has limited the alleged victims' access to justice, and the State has violated Articles 8(1) and 25(1) of the Convention, read in conjunction with Articles 1(1) and 2 thereof.

227. The ***representative*** stated that it "fully shares the conclusion set forth" by the Commission in the Report on the Merits.

228. The ***State*** argued that in its judgment finding that the civil action could lapse under the statute of limitations, the Supreme Court indicated that the ruling "did not deny plaintiffs' right to the compensation recognized in the special laws." It added that analysis of international responsibility "cannot focus exclusively on considering ordinary civil action and its declaration that the statute of limitation was not applicable, while omitting from consideration the reparations channel provided for in the system of special laws, that the representative had disregarded" and that was "not subject to extinguishment." " It requested that the Court find that Argentina is not responsible for the alleged violations.

A.2. Considerations of the Court

229. The Court recalls that in the case of *Órdenes Guerra et al. v. Chile*, it ruled that judicial actions brought to obtain reparations for serious human rights violations are not subject to the statute of limitations. It reiterates the same view herein, as international human rights law is understood to robustly support these considerations.

230. The case points to several statements by international bodies in support of the concept that the statute of limitations shall not apply to actions for obtaining redress for serious human rights violations. Among other examples, it quoted then UN Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights saying, "the principle should prevail that claims relating to reparations for gross violations of human rights shall not be subject to a statute of limitations," as they are linked to "the most serious crimes."[257] It also mentions the Updated Set of Principles for the protection and promotion of human rights through action to combat impunity, adopted in 2005 by the then United Nations Commission on Human Rights. Principle 23 expressly provides that prescription shall not apply to "civil or administrative actions brought by victims seeking reparation for their injuries," and this is reiterated in Principle 32.[258]

231. Accordingly, "[i]nsofar as the facts that gave rise to the civil actions for damages or acts characterized as crimes against humanity, such actions should not be subject to the statute

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[257] *Cf.* Commission on Human Rights, Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms: final report submitted by Mr. Theo van Boven, Special Rapporteur, E/CN.4/Sub.2/1993/8, July 2, 1993, par. 135.

[258] *Cf.* Commission on Human Rights, Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, E/CN.4/2005/102/Add.1, February 8, 2005, Principles 23 and 32. Also see United Nations General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, March 21, 2006, Principle IV.

of limitations.""[259] The Court's findings in that case are further reinforced in a statement by the Working Group on Enforced Disappearances, also applicable to the instant case, when it stated that, in view of the seriousness of the forced disappearance of persons, "the passing of time should not be an obstacle for the progress of civil demands."[260]

232. In 1996, the alleged victims filed a lawsuit against the State in contentious-administrative court seeking "compensation for the harm they suffered from their kidnapping and the kidnapping and disappearance of their parents" (*supra* para. 112). The suit was admitted by a lower court on finding that the continuation of forced disappearance meant that the statute of limitations was not applicable. In the second instance, Victoria's claim was admitted and Anatole's was dismissed, on finding that his action had lapsed because he had "refrained from exercising it upon reaching the age of majority."[261] In response to the decision, the plaintiff and the State appealed to the Supreme Court, which, in a judgment on October 30, 2007, granted the State's appeal, "declar[ed] the action extinguished," and rejected the suit. It found as follows:

> Pursuant to art. 3966 of the Civil Code, "the statute of limitations applies for minors who have legal representatives […]", regardless of […] having demonstrated the reasons why the adoptive parents may have been temporarily prevented from bringing suit […], at least after 1986, the year in which the final report by C[ONADEP] was released, the annex to which […] makes reference to the biological parents of the plaintiffs […]. […T]he argument is not admissible because the action to claim material compensation is not subject to the statute of limitations because it arises from crimes against humanity, which cannot lapse from the perspective of criminal punishment. This is because the former involves a matter that is available and waivable, whereas the latter […] is based on the need for crimes of this kind never to go unpunished, that is, because exceed the material interests of the individuals impacted […].[262]

233. It should be noted that the standard maintained by the Supreme Court of the Nation is not consistent with the international standard prohibiting the application of the statute of limitations to judicial actions undertaken to secure reparation for damage arising from serious human rights violations.[263] For greater clarity, it must be pointed out that the non-applicability of the statute of limitations covers any available judicial, civil, contentious-administrative, and other actions, as well as administrative procedures[264] that are requested by the victims of

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[259] *Case of Órdenes Guerra et al. v. Chile. Merits, Reparations, and Costs.* Judgment of November 29, 2018. Series C No. 372, par. 89.

[260] *Cf.* Human Rights Council, Working Group on Enforced or Involuntary Disappearances, UN Doc. A/HRC/22/45, January 28, 2013, par. 58. Also see Commission on Human Rights, Working Group on Enforced or Involuntary Disappearances, General Comment on Article 19 of the Declaration on the Protection of all Persons from Enforced Disappearance, UN Doc. E/CN. 4/1998/43, January 12, 1998, par. 55.

[261] *Cf.* Judgment issued by Court II of the National Chamber of Appeals in Federal Administrative Litigation on November 4, 2004, which is recorded in CUDAP file: EXP-SO4:0055600/2016, Ministry of Justice and Human Rights (evidence file, volume IV, annex 6 to the answering brief, folio 2939).

[262] *Cf.* Judgment issued by the Supreme Court of Justice of the Nation on October 30, 2007, found in CUDAP case file: EXP-SO4:0055600/2016, Ministry of Justice and Human Rights (evidence file, volume IV, annex 6 to the answering brief, folio 2953). According to the State, the criterion was reiterated by the Supreme Court in the following rulings: i) Judgment of March 28, 2017, case No. 203/2012 (48-V)/CS1, "Villamil, Amelia Ana v/ National State regarding damages"; ii) Judgment of May 9, 2019, case No. CNT 9616/2008/1/RH1, "Engineers, María Gimena v/ Techint Sociedad Anónima Compañía Técnica Internacional regarding accident - special law"; and iii) Judgment of November 12, 2020, case No. 5746/2007/1/RH1, "Crosatto, Hugo Ángel, *et al.* v/ National State Ministry for Interior Affairs *et al.* regarding damages." See, also, expert opinion of María José Guembe, rendered in a public hearing before this Court.

[263] Expert witness María José Guembe and expert witness Juan Ernesto Méndez agreed that prescription is not applicable to lawsuits filed by victims of serious human rights violations to claim the respective reparations. *Cf*. Expert opinion of María José Guembe and Juan Ernesto Méndez, rendered in a public hearing before this Court. Expert witness Juan Ernesto Méndez added that the ban on prescription for serious human rights violations applies "with equal force when it comes to reparations. Victims have the right to justice without time limits, and they also have the right to compensation for damage without such limits." *Cf*. Written expert opinion rendered by Juan Ernesto Méndez (evidence file, volume XIII, written expert opinions, folios 17062).

[264] Consistent with this, article 4 of Law No. 26,913, "Reparations Regime for former Political Prisoners of the Argentine Republic" (*supra*, par. 83), establishes that application of the regime "by contributing […] to reparation for

serious human rights violations in order to claim the corresponding reparations.[265]

234. Consequently, the standard set by the Supreme Court in this specific case violated the rights of the alleged victims to judicially claim the pertinent reparations for the harm caused by the serious acts perpetrated against them and their biological parents, which violated their right to access to justice.

235. As regards the State's pleading, it should be noted that the courts hearing the lawsuit filed by the alleged victims raised no procedural concerns as to the remedies pursued to claim compensation. Therefore, the objection raised is without merit, since the judicial avenue chosen to claim reparations is appropriate and therefore the standard applied by the Supreme Court was harmful to the rights of the alleged victims, thus amounting per se to a violation generating international responsibility.

236. This Court also recalls that Article 2 of the American Convention obliges States Parties to adopt, in accordance with their constitutional processes and the provisions of the Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms protected by that instrument. This duty involves the adoption of two types of measures. The first is the elimination of norms and practices of any nature that entail a violation of the guarantees established in the American Convention,[266] either because they ignore those rights and freedoms or they impede the exercise thereof.[267] The second is the enactment of laws and the implementation of practices leading to the effective observance of such guarantees.[268]

237. Therefore, the declared violation also constitutes a breach of the duty set forth for States in Article 2 of the American Convention, read in conjunction with Articles 8(1) and 25(1), insofar as the standard applied by the Supreme Court of the Nation in the specific case and reiterated in subsequent rulings (*supra* footnote 262), amounts to a judicial interpretation that in practice violates to the rights recognized by the American Convention.

A.2.1. Conclusion

238. Based on these considerations, the Court concludes that the jurisprudential standard applied to this specific case, insofar as it denied the right of the alleged victims to obtain reparations for the serious human rights violations perpetrated against them and their biological parents, amounted to a violation of their right to access to justice. Consequently, the Argentine State is internationally responsible for the violation of Articles 8(1) and 25(1) of the American Convention, read in conjunction with Articles 1(1) and 2 thereof, to the detriment of Anatole Alejandro and Claudia Victoria, who bear the surnames Larrabeiti Yáñez.

B. Administrative mechanisms for providing reparations for serious human rights violations

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crimes against humanity is covered by imprescriptibility thereof, and there are therefore no time limits on exercising the rights granted under the regime."

[265] *Cf.* Commission on Human Rights, Report of the independent expert to update the Set of principles to combat impunity, Diane Orentlicher, E/CN.4/2005/102/Add.1, February 8, 2005, Principles 23: "Prescription shall not apply to crimes under international law that are by their nature imprescriptible. When it does apply, prescription shall not be effective against civil or administrative actions brought by victims seeking reparation for their injuries."

[266] *Cf. Case of Castillo Petruzzi et al. v. Peru. Merits, Reparations, and Costs.* Judgment of May 30, 1999. Series C No. 52, par. 207; and *Case of the Miskito Divers (Lemoth Morris et al.) v.* Honduras, *supra*, par. 45.

[267] *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*, *supra*, par. 113, and *Case of Casa Nina v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment dated November 24, 2020. Series C No. 419, par. 100.

[268] *Cf. Case of Castillo Petruzzi et al. v.* Peru, *supra*, par. 207; and *Case of the Miskito Divers (Lemoth Morris et al.) v.* Honduras, *supra*, par. 45.

B.1. Arguments of the parties and of the Commission

239. The ***Commission*** indicated that, in practice, the judicial remedy chosen by the alleged victims was not hindered by the provisions of Laws 24,411 and 25,914. It added that "the exclusion" of the judicial route offered under both laws did not constitute a violation of the rights recognized by the American Convention.

240. The ***representative*** indicated that the special benefits provided for under the "reparatory laws" constitute "fixed, assessed, and uniform sums," "expressed in Argentine pesos with the consequent […] distortion and deterioration […] due to the erosion from very high inflation and the extreme ups and downs of the economy." It noted that conceptually and quantitatively, the "special benefits" are very different from the "fair compensation" referred to in Article 63 of the American Convention. It added that, without expressly prohibiting or impeding legal action, these laws make the granting of "special benefits" conditional on waiver "fair compensation," thereby "clearly hindering the judicial process [...] and amounting to—at least indirectly—a violation of the American Convention."

241. The ***State*** argued that the Court's temporal competence prevents it from ruling on "the comprehensiveness, sufficiency, or fairness of the compensation" provided for in the reparatory laws, which "displace" any compensation obtained through the courts by virtue of a principle recognized in inter-American case law involving the "ban on unjust enrichment," prohibiting persons from being compensated twice for the same harm. It indicated that the Commission and the representative criticized the laws for their "flat rate" formula, but did not demonstrate that the amounts "fail to meet the standards of justice, comprehensiveness, or suitability." It asked that the Court find that Argentina is not responsible for the alleged violations.

B.2. Considerations of the Court

242. The Court recalls that in its case law, it has held that any violation of a human right "that results in harm creates a duty to make adequate reparation."[269] The right to reparation is thus an essential principle of international human rights law.[270] Likewise, the Court has outlined the different measures of reparation available to redress damage comprehensively, enabling the construction of a jurisprudential framework for measures of restitution, rehabilitation, satisfaction, guarantees of non-repetition, and pecuniary compensation.

243. Regarding the latter and as it relates to the arguments in the instant case, the Court has indicated that, in principle, measures of reparation are individual in nature, but this can vary when States are forced to provide mass reparations to numerous victims, greatly exceeding the capacities and possibilities of domestic courts. In such scenarios, administrative reparation programs constitute one of the legitimate ways of observing the right to reparations. In such contexts, reparations must be understood together with other measures of truth and justice,[271] as long as they meet a series of requirements associated, among other things, with

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269 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs.* Judgment of July 21, 1989. Series C No. 7, pars. 24 and 25, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 95.

270 *Cf.* Inter alia, United Nations General Assembly, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, resolution 40/34 of November 29, 1985; United Nations General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, March 21, 2006; and Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, UN Doc. A/HRC/42/45, July 11, 2019, par. 25.

271 *Cf.* United Nations General Assembly, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, UN Doc. A/69/518, October 14, 2014, par. 83.

their legitimacy and effective capacity to serve as comprehensive redress.[272]

244. The Court has also indicated that the existence of administrative programs of reparation must be compatible with the State's obligations under the American Convention and other international norms and, therefore, it cannot lead to a breach of the State's duty to ensure the "free and full exercise" of the rights to judicial guarantees and protection, in keeping with Articles 1(1), 25(1) and 8(1) of the Convention. Therefore, according to treaty-based rights, the establishment of domestic administrative or collective reparation programs does not prevent victims from filing actions to claim measures of reparation.[273]

245. The first thing that the representative questions is the concept of "fixed, flat, and uniform sums," denominated in national currency, with the consequent "distortion and deterioration" due to inflation, which, it argued, characterize the special benefits under the Argentine "reparation laws," especially laws 24,411 and 25,914, which do not satisfy the content of Article 63 of the American Convention.

246. In this regard, the Court recalls that under international human rights law, measures of reparation must be adequate, effective, and prompt, as well as proportional to the gravity of the violations and the harm suffered.[274] In this regard, the representative's argument, which is abstract and general, does not provide a framework for analysis allowing for an understanding of the specific reasons why the administrative reparations mechanism implemented in Argentina does not comply with the requirements that it be adequate, effective, prompt, and proportional to the specific case of the alleged victims.

247. The representative also argued that the reparation mechanisms make the granting of benefits conditional on the waiver of legal action, for which reason they "hinder the judicial process" and "indirectly" violate the American Convention. The Court would reply that the alleged victims did file suit in the contentious-administrative jurisdiction to claim reparations commensurate to the damages suffered. Their ability to bring this action was not impeded by the dismissal they had received. This is because the judgment that breached their rights did not hold that judicial action was inadmissible. In any case, this Judgment already examined the grounds for dismissal, as it was held to constitute a separate violation (*supra* paras. 232 to 237).

248. Thus, the representative's argument regarding the "waiver" of judicial process to access payment addresses a characteristic of the administrative reparations mechanism that has not affected the alleged victims in this specific case, insofar as they have not accessed the benefits and therefore have not had to "waive" judicial remedies, of which they did in fact avail themselves. In this sense, the argument raises questions in the abstract—which do not necessarily apply to the case of the alleged victims—on domestic regulations for administrative reparations. The matter falls outside the contentious jurisdiction of this Court, which extends only to specific cases in which an act or omission attributable to the State and perpetrated against certain individuals is held to violate rights recognized under the American

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272 *Cf. Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 20, 2013. Series C No. 270, par. 470, and *Case of Órdenes Guerra et al. v. Chile*, *supra*, par. 98.

273 *Cf. Case of García Lucero et al. v. Chile. Preliminary Objection, Merits, and Reparations.* Judgment of August 28, 2013. Series C No. 267, pars. 190 and 192, and *Case of Órdenes Guerra et al. v. Chile*, *supra*, par. 98.

274 *Cf.* United Nations General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147, March 21, 2006, Principle IX; United Nations General Assembly, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, UN Doc. A/69/518, October 14, 2014, par. 46; and Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Fabián Salvioli, UN Doc. A/HRC/42/45, July 11, 2019, par. 44.

Convention.[275] Thus, the Court is not competent to rule on the matter.

VII.4
RIGHT TO HUMANE TREATMENT OF ANATOLE ALEJANDRO AND CLAUDIA VICTORIA LARRABEITI YÁÑEZ, IN CONJUNCTION WITH THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS[276]

A. Arguments of the Commission and of the parties

249. The ***Commission*** argued that the State violated the right to personal integrity recognized in Article 5(1) of the American Convention, to the detriment of the Larrabeiti Yáñez brothers "for the suffering caused by the disappearance of their father and mother and the search for justice."

250. The ***representative*** indicated that for Anatole and Victoria, the effects of the operation carried out on September 26, 1976 "indelibly marred their psyches and the entire context of their lives."

251. The ***State***, for its part, did not make specific arguments in this regard.

B. Considerations of the Court

252. The Court has established that in cases involving the forced disappearance of persons, it can be understood that the violation of the right to integrity of the victims' next of kin is a direct result of this phenomenon, which causes them severe anguish owing to the act itself, which is increased, among other factors, by the constant refusal of the authorities to provide information on the whereabouts of the victim or to conduct an effective investigation to clarify what occurred.[277] Additionally, in cases of grave human rights violations, it can declare a violation of this right to the detriment of the relatives of victims by applying a *iuris tantum* presumption with regard to mothers and fathers, sons and daughters, husbands and wives, long-term domestic partners, and siblings, as corresponds to the particular circumstances of the case.[278] These effects, fully included in the complex nature of forced disappearance, last over time for as long as the final whereabouts of the disappeared person go unsolved.[279]

253. In the instant case, as a direct consequence of classifying the facts as a forced disappearance of Victoria Lucía Grisonas Andrijauskaite and Mario Roger Julien Cáceres, the Court can assume that the son and daughter have experienced psychological and moral damage. Their testimony[280] indicated that they have experienced profound suffering and

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275 *Cf. International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 American Convention on Human Rights).* Advisory Opinion OC-14/94 of December 9, 1994. Series A No. 14, par. 48; *Case of Azul Rojas Marín et al. v.* Peru, *supra*, par. 135, and *Case of Mota Abarullo et al. v. Venezuela. Merits, Reparations, and Costs.* Judgment dated November 18, 2020. Series C No. 417, par. 158.

276 Article 5 of the American Convention, in conjunction with Article 1(1) of the Convention.

277 *Cf. Case of Blake v. Guatemala. Merits.* Judgment of January 24, 1998. Series C No. 36, par. 114, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 90.

278 *Cf. Case of Valle Jaramillo et al. v. Colombia*, *supra,* par. 119, and *Case of Olivares Muñoz et al. v. Venezuela. Merits, Reparations, and Costs.* Judgment of November 10, 2020. Series C No. 415, par. 140, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 90.

279 *Cf. Case of Goiburú et al. v. Paraguay, supra*, par. 103, and *Case of Isaza Uribe et al. v. Colombia*, *supra,* par. 165.

280 In his statement given in a public hearing before this Court, Anatole recounted that he has lived "with sadness, with anguish, with grief in many ways," which translated into "the need for a search" to "know who [his parents] had been," and the need to "never […] stop looking for a place to bring some roses to [his] mother." He indicated that, when visiting the place where Automotores Orletti operated, "it was very difficult to enter and […] what he […] felt at that moment." He indicated that "the impacts to this day are countless" and added that "being able to conclude the story of someone who was never found is important." For her part, Victoria stated that due to her age on the day of the events, she has no memory of what happened, but "she has the experience of trauma, [...] of breaking the

anguish that, as was shown, will continue over time for as long as the uncertainty as to the whereabouts of their biological parents persists.

254. Based on these considerations, the Court concludes that the Argentine State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the American Convention, read in conjunction with Article 1(1), to the detriment of Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez, for the suffering and anguish caused by the forced disappearance of their biological parents.

VIII
REPARATIONS

255. Based on Article 63(1) of the American Convention, the Court has held that every violation of an international obligation which results in harm creates a duty to make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[281]

256. Reparation of harm brought about by the violation of an international obligation consists in full restitution (*restitutio in integrum*), as far as possible, which includes the restoration of the prior situation. If this is not feasible, the Court will determine measures to guarantee the rights that have been violated and redress the consequences of those violations.[282] Accordingly, the Court has considered it necessary to grant different measures of reparation in order to redress the harm comprehensively; thus, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition have special relevance for the harm caused.[283] The Court has established that reparations must have a causal nexus with the facts of the case, the violations that have been declared, the harm proved, and also the measures requested to redress the respective damage.[284]

257. Consequently, based on the violations declared in this Judgment, the Court will proceed to analyze the claims presented by the Commission and the representative, as well as the arguments of the State.

A. Injured party

258. Under the terms of Article 63(1) of the American Convention, this Court considers as injured party anyone who has been declared a victim of the violation of any right recognized in this Judgment. Therefore, the Court considers Victoria Lucía Grisonas Andrijauskaite, Mario Roger Julien Cáceres, Anatole Alejandro Larrabeiti Yáñez, and Claudia Victoria Larrabeiti Yáñez to be the injured parties. Additionally, the Court notes that the evidence provided indicates that on October 20, 2017, a court ruling was issued finding that, "upon [the] death of J[ulien] C[áceres] M[ario] R [oger] and G[risonas] V[ictoria] L[ucía]," "they are succeeded as heirs to their entire estate by

continuity of a nuclear family, of being uprooted [and] of a separation." She indicated that during her childhood, she suffered "from deep sadness, from fear, from a sense of loss [and] depression." She indicated that, at the age of nine, when they told her what had happened to her biological parents, she had a "feeling of helplessness, of a helplessness where adults did something very horrible and very ugly, which has no name." *Cf.* Statements of Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez rendered at a public hearing before this Court.

281 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, Reparations, and Costs*, *supra*, par. 25, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 95.

282 *Cf. Case of Velásquez Rodríguez v. Honduras. Merits, Reparations, and Costs*, *supra*, par. 26, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 96.

283 *Cf. Case of the "Las Dos Erres" Massacre v. Guatemala*, *supra*, par. 226, and *Case of Bedoya Lima et al. v. Colombia*, *supra,* par. 264.

284 *Cf. Case of Ticona Estrada et al. v. Bolivia*, *supra*, par. 110, and *Case of Bedoya Lima et al. v. Colombia*, *supra,* par. 265.

their children," Anatole and Victoria.[285]

B. Obligation to investigate

259. The ***Commission*** asked that the State be ordered to investigate the whereabouts of Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite fully, impartially, and effectively, and, where applicable, to take the measures necessary to identify and deliver their mortal remains to their next of kin in accordance with their wishes. It also asked that a criminal investigation be conducted into the human rights violations that took place in this case in order to "fully clarify the facts, identifying all those responsible, and administering punishment as appropriate."

260. The ***representative*** asked that the State be ordered to "[investigate and prosecute," within a reasonable time, the different "criminal matters that […] remain pending," including the facts related to the "spoils of war." It added that the State must inform the alleged victims of the procedures to be carried out and to allow them, where possible, to witness the work.

261. The ***State*** indicated that, in view of the activities undertaken to search for the remains of Julien Cáceres and what was indicated by the EAAF in this sense, "[it] would not be necessary to take measures in this regard."

B.1. Obligation to investigate the facts and identify, prosecute and punish, as appropriate, those responsible for the facts committed

262. In accordance with the violations declared in this Judgment, without prejudice to the progress made regarding the prosecution of the acts committed to the detriment of Ms. Grisonas Andrijauskaite and her children, Anatole and Victoria, the Court orders the State to continue with its investigation work to fully clarify what happened, in keeping with the findings of this Judgment (*infra* para. 286).

263. Regarding the facts to the detriment of Julien Cáceres, the competent authorities must solve cases 2261 and 2390 within a reasonable time. For these purposes, the State must take into account the considerations of this Judgment regarding the legal classification and subsequent application of the criminal offense of forced disappearance (*supra* para. 207). Finally, the State must investigate with due diligence, where appropriate, the issues surrounding the secret interment of the victim's body in the General San Martín District Municipal Cemetery.

264. Notwithstanding the considerations of this Judgment, the Court deems it necessary to recall that the category of crimes against humanity prevents the State from falling back on mechanisms such as amnesty laws or any other similar provision, ineligibility of criminal charges for ex post facto prosecution, *res judicata*, *ne bis in idem*, or any similar release of responsibility, to excuse itself from meeting its obligations.[286] Likewise, the due diligence that must prevail in this matter means that the pertinent authorities are required to cooperate, for which purpose they must provide the competent bodies with all the information they require and refrain from taking actions that may obstruct the progress of the investigation process.[287]

265. Lastly, given that this Judgment offered no opinion on investigation of the facts related to the "spoils of war," the representative's request is inadmissible.

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[285] *Cf.* Resolution issued by the Civil and Commercial Court No. 10 of San Martín, Province of Buenos Aires, on October 20, 2017, which appears in CUDAP case file: EXP-SO4:0033011/2012, Ministry of Justice and Human Rights (evidence file, volume IV, annex 7 to the answering brief, folios 3571 and 3572).

[286] *Cf. Inter alia*, *Case of Barrios Altos v. Peru.* Merits, *supra, Case of Almonacid Arellano et al. v. Chile*, *supra*, pars. 114, 151, and 154; *Case of La Cantuta v.* Peru, *supra*, par. 114, and *Case of Herzog et al. v. Brazil*, *supra*, par. 232.

[287] *Cf.* Case of García Prieto *et al. v. El Salvador. Preliminary Objections, Merits, Reparations, and Costs.* Judgment of November 20, 2007. Series C No. 168, par. 121, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 104.

B.2. Determination of the whereabouts and, where appropriate, search for the remains of Victoria Lucía Grisonas Andrijauskaite and Mario Roger Julien Cáceres

266. Regarding the whereabouts of Ms. Grisonas Andrijauskaite, the State must carry out, as soon as possible, a search that is serious, systematic, and rigorous, with due diligence and making all possible efforts, using trained personnel and deploying all necessary, appropriate, and suitable technical and scientific resources.[288] For this purpose, it must prepare a work schedule and design the methodology of all the steps necessary to comply with this order, addressing the difficulties that may arise and proposing a plan to overcome them.[289] The methodology must be subject to periodic review, if necessary, in order to verify its effectiveness and determine possible corrective actions.

267. Regarding the search for the remains of Julien Cáceres, the Court orders that, in accordance with the applicable procedural regulations, the judge in case 2637/04 take charge of examining and assessing the information, evidence, and the other relevant elements to provide a well-justified response—within a reasonable time—to the requests submitted by the complainant. If search efforts are suspended, the decision must be made transparently and with the prior and informed consent of the family members.[290] Should the judge decide to continue the search, the competent authorities must continue, with due diligence, their work of investigating the whereabouts of the victim and, if possible, recover and identify his remains and deliver them to his next of kin. Either way, the judicial authority must guarantee the victims receive proper, timely, and adequate communication and information, as they have the right to participate, as appropriate, in the proceedings ordered.

268. The Court reiterates that the duty to investigate remains so long as there is uncertainty about the ultimate fate of the disappeared persons,[291] since, although it is an obligation of means and not of results, the State does have an absolute obligation to deploy all measures necessary to find the person.[292] In this regard, it is essential for the authorities to establish an effective strategy for communicating with the relatives in order to agree on a framework of coordinated action and to ensure their participation in, awareness of, and presence during the procedures ordered, in accordance with the guidelines and protocols on the matter.[293] In addition, should the victims' remains be located and identified, the State must cover the funeral expenses, in agreement with the next of kin and in accordance with their beliefs.[294]

C. Measures of rehabilitation

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288 *Cf. Case of Contreras et al. v. El Salvador, supra*, par. 191; *Case of Terrones Silva et al. v.* Peru, *supra*, par. 203, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 90.

289 *Cf. Case of the Río Negro Massacres v. Guatemala. Monitoring Compliance with Judgment.* Order of the Inter-American Court of Human Rights of February 16, 2021, Considering 24.

290 *Cf.* Committee on Enforced Disappearances, Guiding principles for the search for disappeared persons, UN Doc. CED/C/7, May 8, 2019, Principle 7(4).

291 *Cf. Case of Velásquez Rodríguez v. Honduras.* Merits, *supra*, par. 181; *Case of Goiburú et al. v. Paraguay, supra* par. 89, and *Case of Terrones Silva et al. v.* Peru, *supra*, par. 195. Also see, Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances, UN Doc. A/HRC/45/13Add.3, August 7, 2020, par. 33, and Committee on Enforced Disappearances, Guiding principles for the search for disappeared persons, UN Doc. CED/C/7, May 8, 2019, Principles 7(1) and 13(4).

292 *Cf.* Human Rights Council, Working Group on Enforced or Involuntary Disappearances, General comment on the right to the truth in relation to enforced disappearance, January 26, 2011, UN Doc. A/HRC/16/48, par. 5.

293 *Cf. Case of Contreras et al. v. El Salvador, supra*, par. 191, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 110.

294 *Cf. Case of Anzulado Castro v.* Peru, *supra*, par. 185, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 110.

269. The ***Commission*** asked for implementation of "an adequate physical or mental health services program" for Anatole and Victoria if that is their wish and in consultation with them. It added that because they are not under the jurisdiction of the State of Argentina, measures would need to be adopted to enforce this measure in the service center of their choice or, where appropriate, a payment could be made in an amount sufficient to cover the costs of a possible treatment.

270. The ***representative*** indicated that the serious events that occurred gave rise to medical, psychological, and pharmacological expenses, for which it requested the sum of USD 48,000.00 (forty-eight thousand United States dollars) "for each of the petitioners."

271. The ***State*** argued that the amount requested for physical and mental healthcare was high and that the request could be satisfied through the pension provided for under Law 26,913, the amount of which is reasonable for the intended purpose.

272. The Court has verified that the facts of the case affected the personal integrity of Anatole and Victoria. The Court therefore finds that it is necessary to order a measure of reparation that provides adequate care to address the psychological or psychiatric harm suffered by the victims,[295] which requires taking into account that the latter do not reside on State territory. Consequently, this Court orders the State to pay a sum of money so that both victims can cover the costs of the necessary treatments. The corresponding amount will be set in the section on compensatory damages (*infra* para. 312).

D. Measures of satisfaction

273. The ***Commission*** asked for "the establishment and dissemination of the historical truth of the facts, as well as other measures of a similar nature in consultation" with the victims.

274. The ***representative*** asked that the State be ordered to carry out "a simple and symbolic act before the National Congress" in which the senior authorities of the three branches of government participate. It added that it is necessary "[to] take […] a look towards the future that […] opens up pathways toward justice and reconciliation, truth and harmony."

275. The ***State*** argued that the facts of the case were widely publicized, both by CONADEP and in the judicial processes undertaken at the national level. It indicated that public apologies had been "offered in a timely manner by the highest representative of the State." It added that the building out of which Automotores Orletti operated is now a space "for research, raising awareness, and building memory of State terrorism." It indicated that it is not necessary to order measures in this regard, without prejudice to the best judgment of the Court.

D.1. Public act in acknowledgement of international responsibility

276. Consistent with the magnitude of the violations declared, and particularly in cases of serious human rights violations, this Court has ordered a public act of acknowledgment of State responsibility be held as reparations for the victims and as a guarantee of non-repetition.[296] The effect of this public act is to rehabilitate the victims' memory, the recognize their dignity, and comfort of their heirs.[297]

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[295] *Cf. Case of Barrios Altos v. Peru. Reparations and Costs.* Judgment of November 30, 2001. Series C No. 87, pars. 42 and 45, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 114.

[296] *Cf. Inter alia*, *Case of Plan de Sánchez Massacre v. Guatemala. Reparations.* Judgment of November 19, 2004. Series C No. 116, par. 100; *Case of Goiburú et al. v. Paraguay, supra*, par. 173; *Case of Gelman v. Uruguay*, *supra*, par. 47; *Case of Alvarado Espinoza et al. v. Mexico*, *supra*, par. 312, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 110.

[297] *Cf.* C*ase of Trujillo Oroza v. Bolivia. Reparations and Costs.* Judgment of February 27, 2002. Series C No. 92, par. 77 and, *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, Reparations, and Costs.*

277. The Argentine State indicated that in a public act held on March 24, 2004, then-President Néstor Kirchner "asked for forgiveness on behalf of the National State [...] for so many atrocities," and therefore, in principle, no similar measures are needed. In this sense, Argentina pointed to the public event that took place on the occasion of the creation of the Museum of Memory and for the Promotion and Defense of Human Rights, held in the former headquarters of the Navy Mechanics School (ESMA), which functioned as a clandestine detention and torture center in Buenos Aires.[298] Although this act was related to the serious facts that took place during the dictatorship, the Court notes that it was not carried out in agreement with the victims of this case for the purposes of defining the different aspects of the event. Additionally, there is no information on whether they were able to participate in any way.

278. The Court therefore orders Argentina to hold a public act of acknowledgment of international responsibility for the facts of this case. This act must include reference to the human rights violations declared in this Judgment. The act must be carried out through a public ceremony led by senior State authorities and with the attendance of Anatole Alejandro and Claudia Victoria Larrabeiti Yáñez or their representatives. It must be covered extensively and disseminated nationally.[299] For this purpose, the State and the victims or their representatives must agree on the method of carrying out the public act, as well as pertinent details, including where and when it is to be held.[300] The State has one year, counted from the notification of this Judgment, to comply with the measure ordered.

D.2. Publication of the Judgment

279. As it has in other cases,[301] this Court orders the State to publish, within six months of notification of this Judgment and in an appropriate and legible font: (a) one time only, the official summary of this Judgment prepared by the Court in the Official Gazette; and (b) this Judgment in its entirety, to be available for one year, on an official website. The State must advise this Court immediately when it has issued each of the publications ordered, regardless of the one-year time frame for presentation of its first report, as established in the operative paragraph 19 of this Judgment.

D.3. Audiovisual documentary for the preservation of memory and dissemination of the truth

280. In response to the request by the Commission and the representative, the Court notes that the State reported that under Law 26,691,[302] sites that "operated as clandestine detention, torture, and extermination centers [...] until December 10, 1983" were declared "Sites of Memory." Among these "sites" is Automotores Orletti, where Ms. Grisonas Andrijauskaite, Anatole, and Victoria were held in custody. Likewise, Argentina indicated that in the House for the Right to Identity of the Grandmothers of Plaza de Mayo, located on the site where the Navy Mechanics

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Judgment of October 25, 2012. Series C No. 252, par. 357. See United Nations General Assembly, Report of the Special Rapporteur on the promotion of truth, justice, Fabián Salvioli, Apologies for gross human rights violations and serious violations of international humanitarian law, UN Doc. A/74/147, July 12, 2019, pars. 13 and following.

298 See communication published by the Presidency of the Argentine Republic on March 24, 2004, entitled: "Palabras del Presidente de la Nación, Doctor Néstor Kirchner, en el acto de firma del convenio de la creación del Museo de la Memoria y para la Promoción y Defensa de los Derechos Humanos" (*supra* footnote 37), available at: https://www.casarosada.gob.ar/informacion/archivo/24549-blank-79665064.

299 *Cf. Case of Cantoral Benavides v. Peru. Reparations and Costs.* Judgment of December 3, 2001. Series C No. 88, par. 81, and *Case of Guachalá Chimbo et al. v.* Ecuador, *supra*, par. 239.

300 *Cf. Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 23, 2009. Series C No. 209, par. 353, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 121.

301 *Cf. Case of Cantoral Benavides v.* Peru, *supra*, par. 79, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 117.

302 Law No. 26,691, promulgated on July 27, 2011. Available at: http://servicios.infoleg.gob.ar/infolegInternet/anexos/180000-184999/184962/norma.htm.

School (ESMA) operated, "the story of the family of Anatole and Victoria is told."

281. The Court takes a positive view of efforts already undertaken by Argentina, but Court orders specific measures in response to the need to recover and preserve memory and recognize the dignity of the victims in this specific case.[303]

282. The Court therefore deems it pertinent for the State seek the opinions of Anatole and Victoria or their representatives and, in consideration thereof, prepare an audiovisual documentary on the serious human rights violations committed in the framework of "State terrorism" during the period 1976-1983 and on the inter-State coordination in the context of Operation Cóndor, including the facts of this case and the violations declared in this Judgment. In consensus with the victims, the documentary will include a focus on the differentiated impact that the facts have on women and children. Argentina will bear the expenses of producing, screening, and distributing the documentary, and toward this end, it must establish a committee composed of the victims and their representatives—if applicable—as well as representatives of relevant public institutions for the preparation of the material. The documentary must be screened once on a television channel with nationwide coverage, and the family members and their representatives must be informed of the screening at least two weeks in advance. In addition, the State must provide the material to the authorities of the other States that took part in Operation Condor—including Uruguay and Chile—and provide the victims with fifteen copies of the video so they can distribute them to civil society organizations and universities in the different States to promote it. The State has two years, counted from the notification of this Judgment to produce, screen, and distribute this documentary.

E. Guarantees of non-repetition

283. The ***Commission*** requested the measures of non-repetition to prevent similar incidents from taking place in the future. It asked that measures be ordered to "deploy the efforts necessary to ensure the investigations into crimes against humanity [...] move forward as quickly as possible [...], and to restore the identities of disappeared children."

284. The ***representative*** asked that the State be ordered to "[a]dopt measures to guarantee the non-repetition of the crimes committed" and "[f]oster the adaptation of domestic law to international human rights law."

285. The ***State*** argued that it has adopted a series of policies and actions regarding the process of memory, truth, and justice. It asked the Court to "deny this request."

E.1. Working group to coordinate efforts at the inter-State level to clarify the serious human rights violations that occurred in the context of Operation Condor

286. The Court takes a positive view of efforts made by Argentina to identify the perpetrators of the crimes committed against the victims in this case and, in turn, to investigate and punish the serious human rights violations that occurred during 1976-1983. However, as has been stated, the Court notes that there are elements that have not been fully clarified, including the facts carried out to the detriment of Julien Cáceres, as well as his whereabouts and those of his wife. To these facts are added others included in the prevailing context at the time of the facts, among which it is worth mentioning the criminal network for abducting and confiscating children, the concealment, alteration, or suppression of their identities, and the secret transfer of numerous victims to the territory of other States.

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[303] *Cf. Case of Radilla Pacheco v. Mexico*, *supra*, par. 356, and *Case of Rodríguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia*, *supra,* par. 579.

287. This Court is aware that determining the truth of what happened requires undertaking efforts that, as Argentina has suggested when pointing out the frustrated attempts to request the extradition of possible perpetrators, exceed the capabilities of a national justice system to accomplish on its own. Given this, the Court recalls that States have international obligations to eradicate impunity for serious human rights violations, including a duty of inter-State cooperation,[304] meaning they must cooperate in areas like extradition and reciprocal judicial assistance[305] (*supra* para. 121).

288. Consistent with the requests made, the Court orders that the Argentine State, within one year from the notification of this Judgment and through the channels it deems appropriate, take the pertinent steps to call together the other States involved in the perpetration of the facts of the case—the Eastern Republic of Uruguay and the Republic of Chile—and, in general, in the context of Operation Condor—that is, the Federative Republic of Brazil, the Plurinational State of Bolivia, the Republic of Paraguay and the Republic of Peru[306]—to form a working group that will coordinate possible efforts to carry out the tasks necessary to investigate, extradite, prosecute, and, where appropriate, punish those responsible for serious crimes committed within the framework of the aforementioned inter-State criminal plan. This coordination must take the form of a work plan shared among the competent authorities, depending on the matter in question, carried out in compliance with the applicable national and international legal frameworks and with support from international cooperation and mutual aid mechanisms. The different State authorities will thus have to undertake joint efforts to clarify what happened during Operation Condor as the context in which systematic human rights violations were perpetrated, including the violations that harmed the victims in the present case. The Court will monitor the process of convening the formation of the working group.

289. Although, in accordance with the law governing the international proceeding, this does not mean ordering measures be taken by States that are not a party to this case, the Court deems it necessary to note that their involvement is essential to clarifying what happened, and ultimately, ensuring that these grave human rights violations not remain in impunity. It therefore recalls that, under the collective guarantee mechanism established in the American Convention (*supra* paras. 120 and 121), together with the international obligations on the matter—both regional[307] and universal[308]—States must cooperate with each other to carry out

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304 *Cf. Case of La Cantuta v.* Peru, *supra*, par. 160, and *Case of Herzog et al. v. Brazil*, *supra*, par. 298.

305 *Cf. Case of Herzog et al. v. Brazil*, *supra*, par. 298.

306 *Cf. Case of Goiburú et al. v. Paraguay, supra* pars. 61(5), 61(6), and 72, and *Case of Gelman v. Uruguay*, *supra*, par. 44.

307 *Cf. Inter alia*, Charter of the Organization of American States, Preamble and Article 3, subparagraph e); Inter-American Convention to Prevent and Punish Torture, Articles 11 through 14; Inter-American Convention on Forced Disappearance of Persons, Articles I(c), IV, V, VI, and XII; and Resolution No. 1/03 of the Inter-American Commission on Human Rights on the prosecution of international crimes, dated October 24, 2003.

308 *Cf. Inter alia*, Charter of the United Nations, Preamble and Article 1.3; Universal Declaration of Human Rights, resolution 217 A (III) of the General Assembly of December 10, 1948; International Covenant on Civil and Political Rights, resolution 2200A (XXI) of the General Assembly of December 16, 1966; Geneva Conventions of August 12, 1949 and their Protocols; Convention on the non-applicability of statutory limitations to war crimes and crimes against humanity, resolution 2391 (XXIII) of the General Assembly of November 26, 1968; Convention on the Prevention and Punishment of the Crime of Genocide, resolution 260 A (III) of the General Assembly of December 9, 1948; Convention against Torture and Other Cruel, Inhuman, or Degrading Punishment, resolution 39/46 of the General Assembly of December 10, 1984; International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly on December 20, 2006; Declaration on the Protection of all Persons from Enforced Disappearance, resolution 47/133 of the General Assembly of December 18, 1992, Articles 2 and 14; United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Economic and Social Council, resolution 1989/65, May 24, 1989; United Nations Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity, resolution 3074 (XXVIII) of the General Assembly of December 3, 1973; Resolution on the Question of the punishment of war criminals and of persons who have committed crimes against humanity, resolution 2840 (XXVI) of the General Assembly of December 18, 1971; Draft Code of Crimes against the Peace and Security of Mankind of the International Law Commission of 1996; Declaration on Territorial Asylum, resolution 2312 (XXII) of the General Assembly of December 14, 1967; United Nations Convention relating to the Status of Refugees, adopted on July 28,

these important tasks.[309]

F. Other measures requested

290. The ***Commission*** asked the Court to order "legislative adjustments and change in [...] national jurisprudence so that civil lawsuits relative to crimes against humanity" are not declared subject to the statute of limitations.

291. The ***State*** argued that the provisions for the statute of limitations on civil lawsuits "did not affect the right of the Larrabeiti Yáñez siblings to obtain compensation and redress," and the request for regulatory adaptation in this regard therefore constitutes a "petition of principle or merely declaratory." It asked the Court to "refrain from ordering what was requested."

292. The Court recalls that it declared a violation of the rights established in Articles 8(1) and 25(1) of the American Convention, read in conjunction with the Articles 1(1) and 2 thereof, as a result of the criteria applied by the Supreme Court of the Nation in the instant case in declaring the lawsuit filed by the victims seeking reparations for the facts to be subject to the statute of limitations.

293. According to the information provided, the Argentine Civil and Commercial Code—Law 26,994, in force since 2015—states in the original wording of article 2561 that "civil actions derived from crimes against humanity" are not subject to the statute of limitations. This provision is identical to the one set forth in article 2560 following amendment of the law in 2020.[310] Therefore, since 2015, the domestic legal system has prohibited the application of the statute of limitations in such cases. Despite this, the Supreme Court reiterated this standard that is in violation of the Convention when ruling on this specific case,[311] as can be noted from, among other things, the judgments of March 28, 2017, May 9, 2019, and November 12, 2020[312] (*supra* footnote 262).

294. Therefore, although it is not appropriate to order amendment of the law in this regard, the Court reiterates the obligations for the States Parties that derive from the American Convention and, specifically, the scope of review of compliance with human rights conventions that is the responsibility of the courts (*supra* para. 193). As has been indicated, the Argentine Supreme Court is familiar with the exercise of adequate and timely review of compliance with human rights conventions, which it knows how to apply based on constant jurisprudential dialogue resulting in decisions that have made valuable contributions to human rights case

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1951 by the Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons; Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, General comment on children and enforced disappearances, February 14, 2013, UN Doc. A/HRC/WGEID/98/1, par. 46; Human Rights Council, Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff, UN Doc. A/HRC/27/56, August 27, 2014, par. 30; Committee on Enforced Disappearances, Guiding principles for the search for disappeared persons, UN Doc. CED/C/7, May 8, 2019, Principles 3(4), 9(3), and 12(3); and Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances, UN Doc. A/HRC/45/13Add.3, August 7, 2020, pars. 57 to 59, 88, and 89.

309 *Cf. Case of Goiburú et al. v. Paraguay, supra*, par. 132, and *Case of La Cantuta v.* Peru, *supra*, par. 160.

310 Both articles were amended by Law 27,586, enacted on December 15, 2020 (*supra* footnote 94).

311 Even, article 2537 of the Civil and Commercial Code of the Nation (also amended by Law 27,586) where it refers to the way to resolve conflicts arising from the application of rules that modify prescription deadlines expressly excludes "civil suits arising from crimes against humanity."

312 *Cf.* Judgment of March 28, 2017, case No. 203/2012 (48-V)/CS1, "Villamil, Amelia Ana v/ National State regarding damages," *supra* footnote 37; Judgment issued by the Supreme Court of Justice of the Nation on May 9, 2019, case No. CNT 9616/2008/1/RH1, "Ingegnieros, María Gimena v/ Techint Sociedad Anónima Compañía Técnica Internacional regarding accident - special law"; and Judgment issued by the Supreme Court of Justice of the Nation on November 12, 2020, case 5746/2007/1/RH1, "Crosatto, Hugo Ángel et al. v/ National State Ministry for Interior Affairs *et al*. regarding damages" (evidence file, volume XIV, evidence to facilitate adjudication of the case, folios 17759 to 17830).

law in the region. Consequently, the Inter-American Court finds that the practice of reviewing of compliance with the Convention is the correct tool to monitor domestic interpretation and ensure that it meets international standards, specifically the principles established in this Judgment. This exercise will not be overseen by the Court.

G. Pecuniary compensation

295. The ***Commission*** asked that the State duly redress the human rights violations declared in the Report on the Merits, including both pecuniary and non-pecuniary reparations.

296. The ***State*** argued that the amounts provided under the special laws constitute "just, suitable, sufficient, and comprehensive reparation." It noted that these administrative procedures "are available to the [Larrabeiti Yáñez] siblings today, they were in the past, and they will continue to be once the Court […] issues a ruling, so that they may obtain the reparation […] they are due […], as long as they agree to receive it."

G.1. Pecuniary damages

297. The ***representative*** asked for the payment of USD 800,000.00 (eight hundred thousand dollars of the United States of America) to be ordered for the forced disappearance of the Julien Grisonas couple "as compensatory reparation for the damage caused jointly to the two petitioners consisting of the loss of the lives of both parents." As for the so-called "spoils of war", it requested the sum of USD 180,000.00 (one hundred eighty thousand dollars of the United States of America).

298. It explained that reparation for loss of future earnings must be calculated in consideration of: (a) the ages of Julien Cáceres and Ms. Grisonas Andrijauskaite, who were 33 and 31 years old, respectively; (b) life expectancy estimated at 75 years, and (c) their educational and cultural status, their occupations, and their intellectual and labor capacity. On this basis, it asked that the State be ordered to pay both applicants USD 705,600.00 (seven hundred five thousand six hundred dollars of the United States of America) with respect to the father and USD 739,200.00 (seven hundred thirty nine thousand two hundred dollars of the United States of America) with respect to the mother.

299. It noted that Anatole and Victoria had incurred various expenses "in the search […] for their parents," as well as "to obtain justice and learn the truth of what happened," over the course of 25 years. It asked the Court to order, in equity, "an overall amount for each applicant." It added that these efforts had prevented them from "devoting all the time required […] to their own jobs and other activities," for which it is "reasonable […] that the […] applicants' loss of future earnings be taken into consideration," which it estimated at USD 120,000.00 (one hundred and twenty thousand dollars of the United States of America) for each victim.

300. The Court has developed its jurisprudence on the concept of pecuniary damages and has established that it presupposes the loss or the detriment of income of the victims, the expenses made because of the events and the consequences of a pecuniary nature that have a causal nexus with the facts of the case.[313] Likewise, the jurisprudence has reiterated the clearly compensatory nature of the redress, whose nature and amount depend on the damage caused, for which reason they are not supposed to enrich or impoverish the victims or their heirs.[314]

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[313] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and Costs.* Judgment of February 22, 2002. Series C No. 91, par. 43, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 130.

[314] *Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs.* Judgment of May 25, 2001. Series C No. 76, para. 79, and *Case of Ríos Avalos et al. v. Paraguay, supra* par. 205.

301. The Court recalls that if national mechanisms exist to determine forms of reparation, these procedures and their results should be evaluated[315] to ensure that they meet standards of objectivity, reasonableness, and effectiveness for adequately redressing the rights violations declared by the Court.[316] In this regard, the Court takes a positive view of efforts already undertaken by the Argentine State to fulfill its duty to provide reparations to the victims of the serious events that occurred during the period 1976-1983. These efforts are reflected in the benefits provided, including through Laws 24,411, 25,914, and 26,913. Likewise, the Court recalls that the administrative procedures were initiated to obtain the due benefits for the victims of this case, which, to date, have not resulted in the payment of specific compensation[317] (*supra* paras. 115 to 117).

302. Thus, given the current status of these procedures, the Court deems it pertinent to take into account the amounts proposed by the State for pecuniary damages and specifically under the headings discussed herein. In this regard, Argentina, in its answering brief, presented a breakdown of the sums that stand to be awarded to the victims as benefits provided for under Laws 24,411 and 25,914.[318] Specifically, Anatole and Victoria "will have access to an estimated lump sum […] equivalent to USD 491,506.00 (four hundred ninety-one thousand five hundred two dollars of the United States of America)."[319]

303. This Court finds that the amount indicated is reasonable, in view of the violations declared in this Judgment and its awards in previous cases involving the facts similar to those at issue here. Therefore, with regard to the reparations related to loss of future earnings corresponding to Julien Cáceres and Ms. Grisonas Andrijauskaite, the State must pay both victims, Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez, the aforementioned sum of USD 491,502.00 (four hundred ninety-one thousand five hundred two dollars of the United States of America), divided into equal parts to be disbursed within one year from the notification of this Judgment. For this purpose, if considered pertinent and as long as the amount, term and other established conditions are met (*infra* paras. 323 to 326), the State may make the payment through the administrative mechanism that have been implemented for reparations.

304. Because they do not meet the criteria defined in its case law on pecuniary damages, the Court does not accept the claims of the representative regarding the "substitute reparation for harm […] consisting of the loss of life" of the parents of Anatole and Victoria, nor the claims regarding loss of future earnings that it argued impacted the victims. Likewise, given that this

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315 *Cf. Case of Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment dated May 26, 2010. Series C No. 213, par. 246; and *Case of Almeida v. Argentina*, *supra*, para. 48.

316 *Cf. Case of Cepeda Vargas v. Colombia*, *supra,* par. 246, *Case of Vereda La Esperanza v. Colombia*, *supra,* par. 303.

317 *Cf.* Statement by Anatole Alejandro Larrabeiti Yáñez, given at a public hearing before this Court.

318 Although in its final written arguments, Argentina made reference to the "impact [of] the pandemic" on the economy, alluding to an "approximation" of the amounts that would be granted, on this later occasion it did not specify the amounts nor did it present a detailed breakdown, so the Court takes into account, for the pertinent purposes, the amounts identified in the answering brief.

319 The State indicated that, pursuant to the aforementioned reparatory laws, the benefits amount to the following sums, expressed in the currency of the Argentine Republic: a) for detention, individually, ARS 1,965,247.60 (one million nine hundred sixty-five thousand, two hundred forty-seven pesos and sixty cents; (b) for replacement of identity, individually, ARS 6,255,516.00 (six million two hundred fifty-five thousand five hundred sixteen pesos; (c) for having suffered extremely serious injuries, individually, ARS 3,930,495.20 (three million nine hundred thirty thousand four hundred ninety-five pesos and twenty cents), and if such injuries are classified as serious, individually, ARS 2,947,871.40 (two million nine hundred forty-five seven thousand eight hundred seventy-one pesos and forty cents), and (d) for the forced disappearance of Victoria Lucía Grisonas Andrijauskaite and Mario Roger Julien Cáceres, for each one, ARS 6,255,516.00 (six million two hundred fifty-five thousand five hundred sixteen pesos). For the purposes of its equivalent in dollars of the United States of America, the State indicated that it had applied the "retailer-seller exchange rate" of "ARS 74.90," according to information from the Central Bank of the Argentine Republic as of July 13, 2020.

Judgment includes no opinion regarding the facts classified as “spoils of war” (*supra* para. 191), the request for compensation in that sense is also not granted.

305. Lastly, regarding the expenditures that the victims incurred to conduct and carry out the different proceedings in domestic and international venues, since the request was also made by the representative under the item of costs, the Court considers it pertinent to analyze the expenditures as part of costs.

G.2. Non-pecuniary damages

306. The ***representative*** indicated that the non-pecuniary damages, "consisting of the serious and prolonged suffering experienced," is estimated at the sum of USD 400,000.00 (four hundred thousand dollars of the United States of America), "for each of the applicants." Regarding the harm in the form of “uncertainty, suffering, pain, and anguish of various types and long duration" caused by the acts committed against Anatole and Victoria, it requested USD 400,000.00 (four hundred thousand dollars of the United States of America) “to each of them.” It indicated that it is without question appropriate to redress "the profound harm caused to the 'life plans' of the parents," for which it asked the Court to set, in equity, the appropriate amount. It added that the “non-pecuniary damage caused by Decree 1025/96 “and its derivations” “should be treated separately”, for which it requested USD 70,000.00 (seventy thousand dollars of the United States of America) “for each one of the applicants.”

307. The Court has established that non-pecuniary damages may include distress and suffering caused directly to the victims or their relatives, such as undermining individual core values, and changes of a non-pecuniary nature in the living conditions of the victims or their families.[320]

308. Regarding damage to life plans, this Court has found that such damage is distinct from loss of future earnings and indirect damages.[321] Indeed, a life plan involves the full self-actualization of the person concerned and takes account their calling in life, particular circumstances, potential, and ambitions, thus permitting them to hold certain reasonable expectations and achieve them.[322] Therefore, the life plan consists of expectations for personal, professional, and family development that would be attainable under normal conditions.[323] This Court has indicated that damage to life plans includes loss or serious jeopardy to opportunities for personal development that is either irreparable or very difficult to redress.[324] In certain cases, the Court has also ordered relative compensation for this type of damage, among other measures.[325]

309. In view of the serious facts committed and the violations declared, the Court deems it appropriate, as it has in previous cases,[326] to order compensation for the non-pecuniary damage caused to Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite, as

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320 *Cf. Case of the “Street Children” (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs.* Judgment of May 26, 2001. Series C No. 77, par. 84, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 132.

321 *Cf. Case of Loayza Tamayo v. Peru. Reparations and Costs.* Judgment of November 27, 1998, Series C No. 42, par. 147, and *Case of Casa Nina v.* Peru, *supra*, par. 154.

322 *Cf. Case of Loayza Tamayo v.* Peru, *supra*, par. 147, and *Case of Casa Nina v.* Peru, *supra*, par. 154.

323 *Cf. Case of Tibi v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 7, 2004, Series C No. 114, par. 245, and *Case of Casa Nina v.* Peru, *supra*, par. 154.

324 *Cf. Case of Loayza Tamayo v. Peru*, *supra*, par. 150, and *Case of Casa Nina v.* Peru, *supra*, par. 154.

325 *Cf. Case of the “Las Dos Erres” Massacre v. Guatemala*, *supra*, par. 293, and *Case of Rosadio Villavicencio v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of October 14, 2019. Series C No. 388, par. 249.

326 *Cf. Case of Aloeboetoe et al. v. Suriname. Reparations and Costs.* Judgment of September 10, 1993. Series C No. 15, pars. 51 52; Case of *Gómez Palomino v.* Peru, *supra*, par. 132, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 134.

it is clear that the circumstances surrounding their disappearances caused deep fear and suffering. Consequently, the Court establishes, in equity, for each of the victims, the sum of USD 100,000.00 (one hundred thousand dollars of the United States of America), meaning the total amount stands at USD 200,000.00 (two hundred thousand United States dollars), which must be delivered to Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez, divided equally. This amount must be disbursed within one year of notification of this Judgment.

310. The Court also finds it admissible to provide redress for the non-pecuniary damage caused to Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez consisting of the ongoing suffering and anguish caused by the forced disappearance of their biological parents; the omissions and shortcomings in the search for their whereabouts and eventual location of their remains, to the detriment of their right to know the truth; the excessive delay in the processing of the different cases domestically and full clarification of what happened; and the violation of their right to access to justice due to the State's refusal to grant the corresponding reparations judicially, as well as the demonstrated impacts on the personal integrity of the Larrabeiti Yáñez siblings. Likewise, the circumstances of the case indicate that there has been a clear impact on the victims' life plans, with a differentiated impact on their status as the son and daughter of the persons whose disappearance continues, which must also be taken into account when estimating non-pecuniary damages, as it continues over time for as long as there is uncertainty as to the whereabouts of their biological parents.

311. Consequently, the Court establishes, in equity, the sum of USD 40,000.00 (forty thousand United States dollars) that the State must pay to each of the victims—Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez—to be made effective within a year from the notification of this Judgment.

312. Likewise, this Court orders the State to pay Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez the sum of USD 25,000.00 (twenty-five thousand United States dollars) each, in compensation for expenses incurred and to defray future expenditures for psychological or psychiatric treatments and medications (*supra* para. 272). This amount must be paid out by the State without any conditions or reporting obligations.

313. If considered pertinent and as long as the amount, term and other established conditions are met (*infra* paras. 323 to 326), the State may make the payment through the administrative reparations mechanisms that have been implemented.

314. It should be noted that this Judgment contains no analysis of matters related to Decree 1025/96 "and its derivations" due to lack of specific arguments, so the request for compensation in this regard becomes inadmissible.[327] Nor can the Court award compensation for non-pecuniary damage caused by specific crimes of which Anatole and Victoria "were victims;" it did not rule on this matter, which it exceeded its temporal competence (*supra* paras. 26 to 28).

H. Costs and expenses

315. The ***representative*** pointed out that from mid-1995 to the present day, Anatole and Victoria have needed to seek advice, legal support, and legal representation to assert their rights in multiple actions and petitions, both domestically and before the inter-American

[327] As indicated by the Commission in Report No. 56/19, in the petition filed on November 11, 2005, the representative alleged a "failure to provide reparations for the damage caused by the fourth whereas clause of Decree 1025/96." The Commission reached no conclusion on the alleged violation and did not issue recommendations in this regard. The non-existence of the alleged violation was reiterated by the Commission in its brief submitting the case. For its part, in the pleadings and motions brief, the representative did not refer to this topic or make specific arguments but rather indicated that it "shared the conclusions and recommendations" of the Report on the Merits.

system. It estimated that "costs and expenses should be figured as a percentage equivalent to 20% of the compensation amounts awarded."

316. The ***State*** "object[ed] to the amount claimed […] deeming it obviously too high." It pointed out that the victims can cover these costs using whatever portion they like of the compensation they receive under the special laws.

317. The Court has indicated that costs and expenses form part of the concept of reparation, because the efforts made by the victims to obtain justice, both at the national and international level, entail disbursements that must be covered when the State's responsibility has been declared in a Judgment. Regarding the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, which includes expenses incurred before the authorities of the domestic courts and those generated during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction. This assessment may be based on the principle of equity, taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.[328]

318. In this sense, the Court finds that it is not appropriate for the costs and expenses to be covered using benefits derived from the reparatory laws indicated by the State, since they do not serve the same nature and scope.

319. Although the representative did not provide evidence to substantiate its claim, the Court believes that such expenses were actually incurred; therefore, in equity, it sets an amount of USD 40,000.00 (forty thousand dollars of the United States of America) that the State must pay jointly to both victims, Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez, divided equally. At the stage of monitoring compliance with this Judgment, the Court may order the State to reimburse the victims or their representatives for any reasonable expenses incurred during that procedural stage.[329]

I. Reimbursement of expenses to the Victims' Legal Assistance Fund

320. In an order of March 24, 2021, the President of the Court declared admissible the request presented by the representative regarding the application of the Victims' Legal Assistance Fund of the Court (hereinafter "the Fund"). The order granted the financial assistance necessary to cover the reasonable expenses of formalizing and sending a maximum of two statements via affidavit as indicated by the representative.

321. On June 12, 2021, a report was sent to the State on the disbursements made in application of the Fund, amounting to USD 358.98 (three hundred fifty-eight dollars and ninety-eight cents of the United States of America) and, as established in Article 5 of the Court's Rules for the Operation of the fund, Argentina was granted a deadline for presenting any observations it deemed pertinent. The State, for its part, did not make any observations by the deadline.

322. Therefore, given that there is no objection in this regard, the Court orders the State to reimburse the fund in the amount of USD 358.98 (three hundred fifty-eight dollars and ninety-eight cents of the United States of America). This sum must be reimbursed within six months of notification of this Judgment.

J. Method of compliance with the payments ordered

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[328] *Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs.* Judgment of August 27, 1998. Series C No. 39, par. 82, and *Case of Garzón Guzmán et al. v.* Ecuador, *supra*, par. 136.

[329] *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*, *supra*, par. 29, and *Case of Bedoya Lima et al. v. Colombia*, *supra,* par. 214.

323. The State shall pay the sums set for rehabilitation and for pecuniary and non-pecuniary damages, and shall reimburse costs and expenses established in this Judgment to Anatole Alejandro Larrabeiti Yáñez y Claudia Victoria Larrabeiti Yáñez, directly to both of them, within one year of notification of this Judgment. If either of the beneficiaries should pass away before they receive the compensation, it shall be delivered directly to their heirs, pursuant to the applicable domestic law.

324. The State shall comply with its monetary obligations through payment in United States dollars, or the equivalent in local currency, calculated according to the market exchange rate published or calculated by a relevant banking or financial authority on the date closest to the day of payment.

325. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts established within the time frame indicated, the State shall deposit these amounts in an account or certificate of deposit in their favor in a sound Argentine financial institution, in United States dollars, and on the most favorable financial terms permitted by the State's law and banking practice. If the compensation is not claimed after ten years, the amounts shall be returned to the State with the interest accrued.

326. The amounts granted for rehabilitation, pecuniary and non-pecuniary damages, and to reimburse costs and expenses shall be delivered fully to the persons indicated, as established in this Judgment, without any deductions resulting from possible taxes or charges.

327. If the State should fall in arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Argentine Republic.

IX
OPERATIVE PARAGRAPHS

328. Therefore,

THE COURT

DECIDES,

Unanimously:

1. To admit the preliminary objection of lack of jurisdiction *ratione temporis*, in the terms of paragraphs 21 to 28 of this Judgment.

2. To deny the preliminary objection of lack of jurisdiction *ratione materiae*, in the terms of paragraphs 32 to 33 of this Judgment.

3. To deny the preliminary objection of failure to exhaust domestic remedies as regards to harm involved in the alleged violation of Articles 8 and 25 of the American Convention on Human Rights, in connection with the breach of the duties to provide reparations for human rights violations and adapt domestic law, in the terms of paragraphs 37 to 41 of this Judgment.

4. To deny the preliminary objection for violation of the right to defense and international due process to the detriment of the Argentine State, in the terms of paragraphs 45 to 47 of this Judgment.

AND DECLARES,

Unanimously, that:

5. The State is responsible for the violation of the rights to recognition of juridical personality, to life, to humane treatment, and to personal liberty recognized, respectively, in Articles 3, 4(1), 5(1), 5(2), and 7(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee the rights established in Article 1(1) thereof, and with the provisions of Article I(a) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite, in the terms of paragraphs 127 to 147 of this Judgment.

6. The State is responsible for the violation of the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights and to adopt domestic legal effects established in Articles 1(1) and 2 thereof, and with the provisions of Articles I(b) and III of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez. Likewise, the State violated the right of these family members of the disappeared victims to know the truth. All this is in the terms of paragraphs 164 to 174, 176 to 190, 196 to 223 and 229 to 238 of this Judgment.

7. The State is responsible for the violation of the right to humane treatment recognized in Article 5(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee the rights established in Article 1(1) thereof, to the detriment of Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez, in the terms of paragraphs 252 to 254 of this Judgment.

8. The State is not responsible for the violation of the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, read in conjunction with the obligations to respect and guarantee rights and to adopt domestic legal effects established in Articles 1(1) and 2 of the same instrument, and with the provisions of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, in the terms of paragraphs 175, 192 to 195 and 224 of this Judgment.

AND ORDERS:

Unanimously, that:

9. This Judgment constitutes, per se, a form of reparation.

10. The State shall continue and carry out, within a reasonable period of time and with due diligence, the investigations necessary to determine what happened to Mario Roger Julien Cáceres in order to identify, prosecute and, where appropriate, punish those responsible, in the terms of paragraph 263 of this Judgment.

11. The State shall conduct, as soon as possible, a search that is serious, systematic, and rigorous, with due diligence and making all possible efforts, using trained personnel and deploying all necessary, adequate, and suitable technical and scientific resources to determine the whereabouts of Mario Roger Julien Cáceres and Victoria Lucía Grisonas Andrijauskaite, in the terms of paragraphs 266 to 268 of this Judgment.

12. The State shall hold a public act to acknowledge international responsibility in relation to the facts of this case, in the terms of paragraphs 276 to 278 of this Judgment.

13. The State shall issue the publications indicated in paragraph 279 of this Judgment.

14. The State shall prepare an audiovisual documentary on the serious human rights violations committed in the framework of "State terrorism" during the period 1976-1983 and on inter-State coordination in the context of Operation Cóndor, including the facts of this case, in the terms of paragraphs 280 to 282 of this Judgment.

15. The State shall take the measures necessary to convene and establish a working group to coordinate efforts at the inter-State level to clarify the serious human rights violations that occurred in the context of Operation Condor, in the terms of paragraphs 286 to 289 of this Judgment.

16. The State shall pay the amounts established in paragraphs 303, 309, 311, and 319 of this Judgment as pecuniary and non-pecuniary damages, and to reimburse costs and expenses, pursuant to the terms of paragraphs 323 to 327 of this Judgment.

17. The State shall pay Anatole Alejandro Larrabeiti Yáñez and Claudia Victoria Larrabeiti Yáñez the amounts established for measures of rehabilitation, in the terms of paragraphs 312 and 323 to 327 of this Judgment.

18. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights for the amount disbursed during the processing of this case, pursuant to paragraphs 322 and 327 of this Judgment.

19. The State, within one year of notification of this Judgment, shall provide the Court with a report on the measures adopted to comply with it, notwithstanding the provisions of paragraph 279 of this Judgment.

20. The Court will monitor full compliance with this Judgment, in exercise of its authority and in compliance with its obligations under the American Convention on Human Rights, and will consider this case closed once the State has complied fully with its provisions.

Judge Patricio Pazmiño Freire informed the Court of his individual concurring opinion.

DONE at San Jose, Costa Rica, on September 23, 2021, in the Spanish language.

I/A Court HR. *Case of the Julien Grisonas Family v. Argentina.* Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 23, 2021. Judgment adopted in San Jose, Costa Rica, in a virtual session.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Pablo Saavedra Alessandri
Registrar

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Registrar

CONCURRING OPINION
JUDGE L. PATRICIO PAZMIÑO FREIRE

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF THE JULIEN GRISONAS FAMILY V. ARGENTINA

JUDGMENT OF SEPTEMBER 23, 2021

(Preliminary Objections, Merits, Reparations and Costs)

Within the framework of the debate over the case of the *Julien Grisonas Family v. Argentina*, I take this opportunity and use this platform to contribute to the discussion on the following aspects: First, the right to the truth, its autonomous content in relation to the right to information, and its relevance in the post-truth era; and, secondly, I review the importance of the collective guarantee and the possibility of using existing procedural tools to exercise the inter-state right to information.

Both issues, which fall within the dogmatics of international human rights law, are especially relevant if we recognize and agree regarding the currently convulsive, enigmatic, and confusing context in which our daily lives unfold in the Americas and the world in general. We live overwhelmed by multiple and conglomerate systemic crises, and although they pre-date the coronavirus pandemic, today sees them emerging and exposed crudely and violently, in ways that are impossible to rationalize using formal or complex logic, or what is worse still, from the old and almost always forgotten tools provided by simple and plain common sense. We live in the era of post-truth (sic), systematic deception, shamelessness, anti-politics, denial of the obvious, casual and systematic deception, repeated and amplified by social networks and hegemonic information and communication media that exhaustingly convince us of the transmutation of what is logical, true, and verifiable by the culture expressed in the famous tango Cambalache by Enrique Santos Discépolo.

From the perspective of the development of human rights, based on a systematic, global, and progressive approach to them as an essential tool for overcoming the issues awaiting us in this new era, which we enter with more challenges than certainties, I consider it essential to continue deepening some concepts that doctrine gives us and practice requires of us.

1. The right to the truth and its relevance in the post-truth era. Is it possible to argue over its autonomous content?

With the due authorization of its author, Professor Antonio Cabo De la Vega (Madrid, 12.2021) I will here make use of a part of the talk we had to unravel the twists and turns that await us in this old and ancient anxiety of humankind as it seeks after knowledge: The search of the truth. Here are his thoughts:

“Since rationality took hold of the legal world with the Enlightenment and embodied by Beccaria, truth has become a basic requirement presupposition of the criminal process.

That is, the truth understood as correspondence between what is expressed verbally and what happens in the material world, conceived as a rational and knowable universe.

Previously, the idea of truth was not so much related to the idea of verification through evidence, but rather the idea of authorization. The truth became true depending on who expressed it ("I am the way, the truth and the life," John 14:6 says). The ideas of Thersites in the assembly of Achaean heroes of the Iliad cannot be "true" because they are expressed by a ridiculous character, and those of the poet, on the other hand, are true because they come from a Muse. Hence also, the

quintessential proof of law until the Enlightenment was the confession. The expressions become literally true when uttered, when admitted ("I act under the influence of the Devil" in a process before the Court of the Holy Office, for example).

In a world that aspires to know itself scientifically, on the contrary, a different approach to truth emerges. The truth is the measure, it is what results from the technical instruments: It is an essentially documentary truth.

Therefore, as we have said, the criminal justice process is based on the discovery of the material truth (but not the civil process, which continues to be inspired by the idea of the parties as owners of the process and, consequently, as owners of the "truth" that it is none other than what they themselves want to express (*iuxta ALLEGATA et probata partium*).

This material truth, naturally, can always be compromised through deception (intentional, negligent, or involuntary—such as the one who deceives himself), and that is why there is the evidentiary phase that must be conducted in court, and documentary evidence (written, recorded) rise to a position of eminence, along with experts as adjudicators of scientific truth.

This classic approach has been called into question on two levels recently. On the one hand, technological development has completely exceeded the capacity of the common citizen (and even of justice officials) to understand it. From the CSI effect (the irrational belief in the ability of science to solve cases), to the perplexity of the judge before apparent incontrovertible evidence that turns out to be mere technological montages (the deep fake) or the verification of the racial or gender bias of the presumably infallible and innocent algorithms, has placed the evidence phase in a state of indeterminacy in which, as everything is possible, personal and social motivations, etc., end

up emerging. Without understandable standards, and with insurmountable technological disparities between the parties, objective assessment of the evidence seems like a chimera.

All in all, the question of truth has taken a leap that we could describe as extra-procedural. Indeed, what is happening today is the deliberate construction of a total parallel reality (neither true nor false in the classical sense of the word) by agents with specific interests, who not only do not hide their intentions (the Metaverse), but achieve the spontaneous collaboration of the subjects themselves "deceived" by this parallel reality, who, in a form of radical escapism, become complicit in its expansion: Instead of fleeing from reality, let us socially build a parallel one.

This state of affairs cannot be dealt with in the courts because it both extends beyond and envelopes the legal process. Rather, it requires a public policy response. Thus, it acquires a dimension more of a social or collective right (such as peace or a healthy environment), rather than an individual guarantee. A state of affairs for which the individual solution is not satisfactory (extracting a situation, acts, or specific subjects from the parallel world to insert them (momentarily?) in the (real?) world of the legal process), but rather question structural elements of social relations." We have followed Dr. De Cabo thus far and now use his important reflection as context.

Ideology, cynicism, and post-truth

Slavoj Žižek has started the discussion on how the classic version of ideology, which assumes that individuals are prevented from clearly knowing the reality in which they interact, has mutated into a much more sophisticated and complex—I would also say dangerous—version of ideology. A world where individuals perceive

reality itself as ideological.[1] If, before, we used the tools of reality to compare the facts, today it becomes extremely difficult to do so, not only because there is an ideologized (and of course, polarized) version of reality but also because our reality is full of facts that are not true and that have been artificially created to support an ideologized version of reality. We are in a world that goes beyond deliberate falsehood or lies as conceived by the critical theory of Hannah Arendt, who defined:

> "The deliberate falsehood deals with contingent facts; that is, with matters that carry no inherent truth within themselves, no necessity to be as they are. Factual truths are never compellingly true. The historian knows how vulnerable is the whole texture of facts in which we spend our daily life; it is always in danger of being perforated by single lies or torn to shreds by the organized lying of groups, nations, or classes, or denied and distorted, often carefully covered up by reams of falsehoods or simply allowed to fall into oblivion."[2]

For Žižek, the problem with this ideologized version of reality is that it goes beyond deliberate falsehood or simple lies. The individual is fully aware they are transforming the outside world through their actions. That is why we speak of cynicism as the replacement for morality in the actions of the post-truth world. Fake news or the use of pseudo science end up becoming the tools to build this new version. The obvious, conscious, and deliberate lie finds a central role, where it is not condemned, but rather amplified, shared and "viralized." In the world of Arendt and critical theory, massive technological applications did not yet exist, nor did social networks. Deliberate falsehood was constructed in a more uniform and less "collaborative" process. Today, in the world of Twitter, TikTok, Facebook and Instagram, reality is built collaboratively, with the different users contributing to "piercing"

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[1] Žižek, Slavoj. The Parallax View. Cambridge, MA: The MIT Press, 2006Žižek, Slavoj. "Between Symbolic Fiction and Fantasmatic Spectre: Towards a LacanianTheory of Ideology", en R. Buttler and S. Stephens (Eds.). SlavojŽižek, Interrogating the Real. LondonandNew York: Continuum, 2005:249-270. Žižek, Slavoj. "Introduction", en S. Žižek (Ed.). Mapping Ideology. London and New York:Verso, 1994:1-33. Žižek, Slavoj.The Sublime Object of Ideology.London: Verso, 1989.

[2] Arendt, Hannah (1972). Crises of the Republic; lying in politics, civil disobedience on violence, thoughts on politics, and revolution. Harcourt Brace Jovanovich. pp. 4

it. The options are immense in a globalized world, and the role of information technology is still uncertain. In turn, this new reality is endorsed and validated with instruments such as “lawfare” or media crushing, "image assassination," the irremediable destruction of the presumption of innocence without due process, causing those who defend the truth to be mercilessly ''disciplined''.

It is in this context that I consider it important to treat the right to truth as an autonomous right. In order to contribute to the dogmatics of international human rights law, I would like to argue that in this case, we could moved forward toward defining this right as an autonomous one.

The right to truth as an autonomous right in the Inter-American System

The right to the truth has been the subject of extensive discussion in international law, not only before the inter-American human rights system, but within the general doctrine, and even within States. Conceptualizing means delving into its origin, its scope, and its very existence. On some occasions, quotes from great thinkers are used when analyzing it:

> *"The people have the same right to the truth as to life, liberty, and the pursuit of happiness."* Epictetus (55-135)
>
> *“Peace, if possible; but the truth, at all costs.”* Martin Luther (1483-1546)[3]

Its origin and significance is linked to specific social and political processes and contexts:

> [...] a right to the truth, if indeed such a right exists in international law, would intermesh strategically with the broader objectives of international criminal law, arguably

[3] Taken from: Yasmin Naqvi, “The right to the truth in international law: fact or fiction?” International Review of the Red Cross, June 2006, Original Version No. 862, pg. 2 Available at https://international-review.icrc.org/sites/default/files/irrc_862_2.pdf

> including those of restoring and maintaining peace (because by exposing the truth, societies are able to prevent the recurrence of similar events), facilitating reconciliation processes (because knowing the truth has been deemed essential to heal rifts in communities), contributing to the eradication of impunity (because knowing the truth about who was responsible for violations leads to accountability), reconstructing national identities (by unifying countries through dialogue about a shared history), and setting down a historical record (because the ‘‘truth’’ of what happened can be debated openly and vigorously in court, adding credibility to the evidence accepted in a criminal judgment).
> […]
> It could also be contended that the right to the truth underlies the very process of criminal indictment by ensuring proper investigation of crimes and transparency in the form of habeas corpus procedures in the detention of individuals by the state, as well as by requiring public access to official documents. Where judgments have been made, the satisfaction of the right to the truth may arguably form part of reparations to victims.[4]

“The right to the truth has emerged as a legal concept in various jurisdictions and in many guises. Its origins may be traced to the right under international humanitarian law of families to know the fate of their relatives, recognized by Articles 32 and 33 of the 1977 Additional Protocol I to the Geneva Conventions of 1949, as well as obligations incumbent on parties to armed conflicts to search for persons who have been reported missing.”[5]

“Enforced disappearances of persons and other egregious human rights violations during periods of extreme, state- sponsored mass violence, particularly in various countries of Latin America but also

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[4] Taken from: Yasmin Naqvi, “The right to the truth in international law: fact or fiction?” International Review of the Red Cross, June 2006, Original Version No. 862, pg. 3-4. Available at https://international-review.icrc.org/sites/default/files/irrc_862_2.pdf

[5] Taken from: Yasmin Naqvi, “The right to the truth in international law: fact or fiction?” International Review of the Red Cross, June 2006, Original Version No. 862, pg. 5 Available at https://international-review.icrc.org/sites/default/files/irrc_862_2.pdf

in other parts of the world, prompted a broader interpretation of the notion of the right to be given information about missing persons. It also led to the identification and recognition of a right to the truth by various international organs, in particular, the Inter-American Commission on Human Rights and Court of Human Rights, the UN Working Group on Enforced or Involuntary Disappearances and the UN Human Rights Committee."[6]

It is not expressly contained in any written norm that is classified as a source of international law according to article 38 of the Statute of the International Court of Justice. However, it is argued that its nature can be determined in two ways: as customary law or as a general principle of law.

i. Customary law = "And yet the right to the truth has been recognized without question both by a number of international organs and by a number of courts at the international and national level, and has been enshrined as a guiding principle in numerous instruments setting up truth and reconciliation commissions, as well as in national legislation. Some legal experts have also identified the right to truth as a customary right. Clearly, there is a need to look a bit more carefully at these sources to see how they have identified such a right and what contours can be discerned."[7]

ii. General Principle of Law = "It may be argued that the right to the truth can be discerned as a principle of law deriving from sources at both the international and the national levels. In terms of the former, it may be used as a means of inferring the existence of broad rules from more specific rules by means of inductive reasoning. The jurisprudence of the human rights courts, which seem to identify a broader right to truth in their

[6] Taken from: Yasmin Naqvi, "The right to the truth in international law: fact or fiction?" International Review of the Red Cross, June 2006, Original Version No. 862, pg. 5 Available at https://international-review.icrc.org/sites/default/files/irrc_862_2.pdf

[7] Taken from: Yasmin Naqvi, "The right to the truth in international law: fact or fiction?" International Review of the Red Cross, June 2006, Original Version No. 862, pg. 12 Available at https://international-review.icrc.org/sites/default/files/irrc_862_2.pdf

analysis of specific conventional rights, would appear to provide some evidence for this. In the latter, as a principle derived from sources at the national level, it is able to 'fill gaps' when treaties and custom do not provide enough guidance."[8]

Juan E. Méndez, one of the leading legal experts on the right to the truth, has characterized it as an "An emerging—though rapidly developing—norm of international law."[9] Likewise, he describes it as the "State obligation to reveal to the victims and society everything known about the facts and circumstances of massive and systematic human rights violations of the past, including the identity of the perpetrators and instigators" In this same sense, he argues that "This obligation presupposes the existence of massive or systematic human rights violations taking the form of the most abhorrent international criminal offences such as torture, genocide, disappearances, war crimes, or crimes against humanity"[10]

He adds that "this obligation is likely to arise in contexts of Transitional Justice in Post-Conflict Situations marked by the end of political violence, the cessation of the hostilities, or the fall of the dictatorial regime; yet technically this obligation arises with the systematic human rights violation itself."[11]

Although some authors dispute its origin and legal nature, as evidenced in the above sections, in another line of thinking, the doctrine has established that "today, all the conditions and requirements are met to recognize the right to the truth as an autonomous fundamental right. All that is missing is formal and explicit recognition, both in international conventions and in States' constitutions."[12]

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[8] Taken from: Yasmin Naqvi, "The right to the truth in international law: fact or fiction?" International Review of the Red Cross, June 2006, Original Version No. 862, pg. 28 Available at https://international-review.icrc.org/sites/default/files/irrc_862_2.pdf

[9] Taken from: Juan E. Mendez y Francisco J. Bariffi, "Truth, Right to, International Protection". Max Planck Encyclopedia of Public International Law, 2012. Available at: https://www.corteidh.or.cr/tablas/r17382.pdf

[10] Taken from: Juan E. Mendez y Francisco J. Bariffi, "Truth, Right to, International Protection". Max Planck Encyclopedia of Public International Law, 2012. Available at: https://www.corteidh.or.cr/tablas/r17382.pdf (Méndez [1998] 255).

[11] Taken from: Juan E. Mendez y Francisco J. Bariffi, "Truth, Right to, International Protection". Max Planck Encyclopedia of Public International Law, 2012. Available at: https://www.corteidh.or.cr/tablas/r17382.pdf.

[12] Taken from: Gerardo Bernales Rojas, "El Derecho a la Verdad." *Estudios Constitucionales* vol.14 no.2, Santiago, Chile, 2016. Available at https://www.scielo.cl/scielo.php?pid=S0718-52002016000200009&script=sci_arttext

However, the case law of the Inter-American Court of Human Rights treats it as a right that falls under the right to due process. When analyzed as part of the due process, "it acquires relevance for the building of a civilized society", which is why “recognizing this right requires that it be considered not only as a part of the due process, but also as an autonomous fundamental right, also classified as among social rights, making its recognition a necessity in modern political societies.”[13]

From the perspective of the Inter-American Court, this right has been closely linked to the right of the next of kin of the victims in cases of serious human rights violations. Specifically, it was initially linked to the extended nature of forced disappearance.[14]

Considering the initial link between the right to truth in the inter-American system and forced disappearances, both the Inter-American Court and the Commission have established different obligations that correspond to the States in cases of forced disappearances, among which is "an obligation to establish the facts of what happened, locate the victims’ whereabouts or their remains, and inform the next of kin to that effect,”[15] obligations that continue to be reiterated by the Court from the judgment in the *Case of Goiburú et al. v. Paraguay* from September 22, 2006,[16] to this day.

However, I am of the mind that it is necessary to understand the right to the truth as an autonomous right, without prejudice to the fact that it is also part of the general principles of law—or of customary law—in the terms proposed. This nature of principle-law allows it to be invoked not only under articles 8 and 25 of the

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[13] Taken from: Gerardo Bernales Rojas, “El Derecho a la Verdad.” *Estudios Constitucionales* vol.14 no.2, Santiago, Chile, 2016. Available at https://www.scielo.cl/scielo.php?pid=S0718-52002016000200009&script=sci_arttext

[14] Taken from: Inter-American Commission on Human Rights, “The Right to Truth in the Americas,” OEA/Ser.L/V/II.152, Doc. 2, August 13, 2014, para. 56. Available at: http://www.oas.org/es/cidh/informes/pdfs/Derecho-Verdad-es.pdf.

[15] Taken from: Inter-American Commission on Human Rights, “The Right to Truth in the Americas,” OEA/Ser.L/V/II.152, Doc. 2, August 13, 2014, para. 60. Available at: http://www.oas.org/es/cidh/informes/pdfs/Derecho-Verdad-es.pdf.

[16] Para. 89.

Convention—that is, related to the right to access to justice—but also and effectively under Article 13, which establishes the right to freedom of expression.

Consequently, I am additionally inclined to argue that the right to the truth is directly and closely related to the right to information, according to which—based on a comparative reading that makes use of the regional dialogue—it is, for example, contemplated that all persons have the right, on the one hand, to seek, receive, exchange, produce, and disseminate information about facts and processes in the general interest (Art.61 Constitution of the Republic of Ecuador); this right encompasses the freedom to seek, receive, and impart information and ideas of all kinds. In Spain, the right to information has been established in the Constitution as a dual right: the right to communicate and the right to receive information, recognized in numerous rulings by the Constitutional Court.[17] Article 20(1)(d) recognizes, therefore, two differentiated rights in which it is possible to distinguish both objective and subjective dimensions. Objectively, both rights correspond to the community, and are constituted as a guarantee of free public communication, thus endowing them with a special precedence over other constitutional rights, "with an effectiveness that transcends what is common and characteristic of other constitutional rights." However, the freedom to transmit information is the only one that can be subjectivized, receiving individual protection, whether it is exercised by information professionals or by any citizen.

The dual nature of this right—individual and collective—may enable us to face the challenges of post-truth societies more decisively, or as De Cabo said, enable us to recognize that the right to information "Acquires in this way a dimension more of a social or collective right (such as peace or a healthy environment), than an individual guarantee," bringing us closer to identifying the right to the truth with this dual dimension of the right to information, laying the groundwork for replacing the criminal procedural approach of

[17] STC 105/1983, FJ 11

before on this issue. I would note for the record that this is a space for reflection, so my hope with this vote is that the new composition of the Inter-American Court identifies with the need to deepen and advance in this line of reasoning.

2. The importance of collective guarantee and the possibility of using existing procedural tools to request information from multiple States

The case under consideration has to do with Operation Condor, organized and designed by the national security agencies of the United States of America and implemented in collaboration with various States in the region, but which in the specific facts of the case involve Argentina, Chile, and Uruguay.

The Court has been developing the concept of collective guarantee from the perspective of compliance with obligations and the role of the community of States in guaranteeing human rights. Along these lines, it has indicated that the collective guarantee translates, then, into a general obligation to protect corresponding to both the States Parties to the Convention and the Member States of the OAS to ensure the effectiveness of these instruments, which constitutes an *erga omnes* obligation.[18]

I maintain that in this case, this perspective could have been further developed through participation and cooperation between States and the Court. Argentina alone assumes the satisfaction of achieving truth, justice, and reparations despite the fact that the human rights violations committed against the Julien Grisonas family were coordinated and carried out by several States.

As can be evidenced in the case, the facts indicate coordinated transnational and interstate actions. Shared responsibility is a doctrine that encompasses "all situations that deal with the allocation of responsibility and apportionment of liability in

[18] Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the consequences for State human rights obligations (interpretation and scope of articles 1, 2, 27, 29, 30, 31, 32, 33 to 65 and 78 of the American Convention on Human Rights and 3(l), 17, 45, 53, 106 and 143 of the Charter of the Organization of American States). Advisory Opinion OC-26/20, November 9, 2020. Series A No. 26.

situations where multiple entities have contributed to an injury arising from an internationally wrongful act."[19]

For its part, in the case of *Goiburú v. Paraguay*, the Court has clarified that

> to ensure the effectiveness of the collective guarantee mechanisms established in the Convention, [...] States Parties to the Convention should collaborate with each other to eliminate the impunity of the violations committed in this case by the prosecution and punishment of those responsible.[20]

Although we could not issue a judgment finding Chile or Uruguay responsible, since these States have not fully participated in the proceedings, I believe that it is feasible to advance in terms of the cooperation of the States with the Court within the framework of Article 58 of the Rules of Procedure, which grants the Court broad evidentiary powers.[21] Along these lines, the Court should have made progress in requesting information from these States that could have made it possible to advance in determining the international, interstate, and cross-border nature of the facts of this case.

A separate discussion is the possibility of determining the international responsibility of several States in making inter-State cooperation decisions that produce acts that end up violating human rights in other countries. Although the American Convention does not expressly address it, nor do the Rules of

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[19] Maarten Den Heijer, Procedural Aspects of Shared Responsibility in the European Court of Human Rights, 4 J. OF INT'L DISP. SETTLEMENT 361, 362 n.3 (2013)

[20] Inter-American Court. *Case of Goiburú et al. v.* Paraguay. Merits, reparations and costs. Judgment of September 22, 2006. Series C No. 153, para. 166

[21] Article 58. Procedure for Taking Evidence
The Court may, at any stage of the proceedings: a. Obtain, on its own motion, any evidence it considers helpful and necessary. In particular, it may hear, as an alleged victim, witness, expert witness, or in any other capacity, any person whose statement, testimony, or opinion it deems to be relevant. b. Request the Commission; the victims or alleged victims, or their representatives; the respondent State; and, if applicable, the petitioning State to submit any evidence that they may be able to provide or any explanation or statement that, in the Court's opinion, may be useful. c. Request any entity, office, organ, or authority of its choice to obtain information, express an opinion, or deliver a report or pronouncement on any given point. Such documents may not be published without the authorization of the Court. d. Commission one or more of its members to take steps in the advancement of the proceedings, including hearings at the seat of the Court or at a different location. e. If it is impossible to proceed according to the terms established in the previous paragraph, the Judges may commission the Secretariat to take necessary steps in the advancement of the proceedings.

Procedure, this case leaves open the possibility of deepening a discussion on whether a future reform or judicial practice by the Commission and the Inter-American Court in a specific case would allow the participation of multiple States as parties to the process.

Bearing in mind the complexity of the human rights violations exposed in this case and the seriousness with which an operation as dark and bloody as Plan Condor, in which various States participated, must be investigated, it is necessary to place these concerns on the record so they can hopefully draw attention to the organs of the system as well as to the representatives of the victims so that they can be presented, admitted, and debated within the system, either through reform of the Rules of Procedure or, as I have argued in other votes, through case law development.

L. Patricio Pazmiño Freire
Judge

Pablo Saavedra Alessandri
Secretary